According to 2017-2018 Syllabus

Legal Environment of Business

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This book named "Legal Environment of Business" (session: 2017-18) is written for BBA (Professional), Tourism and Hospitality Management, Honours, MBA, CA and all Public and Private University and DU affiliated 7 College

Legal Environment Of Business

(Business Law and Legal Issues of Tourism)

[With previous years solutions of BBA (Professional) questions under NU]

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FROM THE AUTHORS' DESK

At first all thanks go to the Almighty Allah who gave us the opportunity to write this book on **Legal Environment of Business/Business Law and Legal Issues of Tourism**. We have tried our level best to make this book student friendly and informative as well.

While writing this book, we have taken help various information from website, journals, magazines and international books as well. We have mainly focused on the syllabus (2017-2018) of BBA (Professional) course under National University, Bangladesh.

We also followed the main text book named:
The Negotiable Instruments Act, 1881; The Sale of Goods Act, 1930;

The Company Act, 1994; The Partnership Act, 1932; The Bangladesh Labor Act, 2006.

However, the book can be regarded as a source of study for the students' of other Universities and colleges partially or equally based on this syllabus.

We hope that the reader of all classes will be benefited from the second edition of this book. We shall be very grateful if the readers of this book provide their comments, suggestions as well as constructive criticism for further improvement in future.

In spite of all efforts, some errors might be there. We shall be thankful to our readers if the same are brought to our notice. Suggestion and comments for further improvement of this book will be gratefully acknowledged.

Authors
March, 2020

SYLLABUS

Second Year / Third Semester

510123	Legal Environment of Business
01	**The Contract Act, 1872:** Definition of a Contract- Essentials Elements of a Contract- Offer- Acceptance- Consideration- Void and Voidable Agreements- Capacity of Parties- Free Consent Legality of Object and Consideration Contingent Contract- performance of Contracts- Termination and Discharge of Contracts- Indemnity & Guarantee – Bailment and Pledge.
02	**The Negotiable Instruments Act, 1881:** Definition- Acceptance and Negotiation- Rights and Liabilities of Parties- Dishonor of Negotiable Instruments.
03	**The Sale of Goods Act, 1930 :** Definitions. Transfer of' Ownership 'Performance of the Contract of Sales.
04	**The Company Act, 1994:** Definition, Characteristics, Types, Memorandum– Contents and Clauses, Alteration. Article of Association– Purpose, Content, Alteration-, Formation of Company– Steps, Procedure of registration and Incorporation, Certification of Incorporation, Prospectus: Purpose, Contents, Chairman, Directors and Managing Director– Appointment, Qualification, Powers and Duties, Removal, Vacation of Office, Remuneration, Meetings – Statutory Meetings, Statutory Report, Annual Meeting, Extraordinary General Meeting, Resolutions, Minutes of Proceeding Winding Up – Winding up by the Court. Voluntary Winding Up, Winding Up subject to the Supervision of the Court, Appointment of official Liquidators.
05	**The Partnership Act, 1932:** The nature of partnership–Relations of partners to one another– Relations of partners to third parties–Incoming and outgoing partners– Dissolution of a firm– Registration of firms.
06	**The Bangladesh Labor Act, 2006:** Important Statutory Definitions: Factory, Worker, Employer, Commercial Establishment, Industrial Establishment; *Summary of major provisions on:* Employment and Conditions of Services, Employment of Adolescent, Provisions of Health, Hygiene, Safety and Welfare Measures, Working hours and leave, Trade Union and Industrial relations, Dispute resolution, Workers' Participation in Companies' Profits.

Paper Code : 520909	--------	Credits : 3	Class Hours : 90
Paper Title : Business Law and Legal Issues of Tourism			

Course Objectives: Tourism executives in the course of performing their normal duties to deal with two main groups of people–outside and inside. Dealing with these groups of people are guided and controlled by certain laws. The objectives of this course is to give the students idea of the various laws related with business and tourism.

Topics to be Covered

1. **The Contract Act, 1872:** Definition of contract–Essentials of contract–Communication, acceptance and revocation of proposals–Contracts, voidable contracts and void agreements–Consignment contracts–Contracts which must be performed–Time and place of performance–Contracts which need not be performed–Breach of contract–Indemnity and guarantee–Bailment–Bailment of pledges–Agency, appointment and authority of agents, sub-agents, revocation of authority, agent's duty to principal, principal's duty to agent.
2. **The Sale of Goods Act, 1930:** Formation of the contract–Effects of the contract–Performance of the contract–Rights of unpaid seller against the goods- Suits for breach of the contract.
3. **The Negotiable Instruments Act, 1881:** Promissory notes, bills of exchange and cheques–Negotiations–Payment and interest–Discharge from liability on notes, bills and cheques–Notice of dishonour–Special provisions relating to cheques–Special provisions relating to bills of exchange–Penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts
4. **The Trade Marks Act, 2009:** Registration procedures and duration, Effects of registration, Use of trademark.
5. **The Partnership Act, 1932:** The nature of partnership–Relations of partners to one another–Relations of partners to third parties–Incoming and outgoing partners–Dissolution of a firm–Registration of firms.
6. **The Bangladesh Labor Act, 2006:** Important Statutory Definitions: Factory, Worker, Employer, Commercial Establishment, Industrial Establishment; *Summary of major provisions on:* Employment and Conditions of Services, Employment of Adolescent, Provisions of Health, Hygiene, Safety and Welfare Measures, Working hours and leave, Trade Union and Industrial relations, Dispute resolution, Workers' Participation in Companies' Profits.
7. **The Bangladesh Environment Conservation Act, 1995:** Restrictions on manufacture, sale etc. of article s injurious to environment–Remedial measures for injury to ecosystem–Environmental Clearance Certificate.
8. **The Arbitration Act, 2001:** Arbitration agreement, Subject matter of arbitration, Different methods of arbitration, Arbitration Tribunal, Arbitral proceedings, Arbitral award, Appeals.
9. **The Competition Act, 2012:** Objective of the Act–Agreement against Competition–Abuse of Dominant Position–Bangladesh Competition Commission–Complaint, Inspection and Disposal–Appeal.

Text: Commercial Law by A. K. Senand J.K. Mitra & Ehical, Legal and Regulatory Aspects of Tourism Business by R. Singhal

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LEGAL ENVIRONMENT OF BUSINESS

'Students' friendly Edition'

CHAPTER-01

Contract Act, 1872

Syllabus: The Contract Act, 1872: Definition of a Contract- Essentials Elements of a Contract- Offer-Acceptance- Consideration- Void and Voidable Agreements- Capacity of Parties- Free Consent Legality of Object and Consideration Contingent Contract- performance of Contracts-Termination and Discharge of Contracts- Indemnity & Guarantee - Bailment and Pledge.

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1.1 Introduction
(ভূমিকা)

Law is systems that are enforced to govern the behavior. The laws relation to contract in our country is controlled and regulated by the contract Act 1872. The Act has 238 sections under its 11 chapters. It contains the common rules relating to contracts and different aspect related the law.

The Contract Act, 1872 provides rules and regulations to serve the purpose. Rights and liabilities and the manner of performance are determined by the parties themselves under the contract but obviously within the purview of the act. The law of contract is applicable not to the business community, but also to others. Every one of us enters into a number of contracts almost every day, and most of the time we do so without even realizing what are doing from the point of law.

1.2 Definition of Contract Act
(চুক্তি আইন-এর সংজ্ঞা)

Contract is an essential system for society. People need to do many types of contract every day for their mutual interest. Contract is needed in commercial sector also. A contract is an agreement between two or more parties to perform a service, provide a product or commit to an act and is enforceable by law. When any rules and regulations are introduced and applied by the government to make the contract according to law then it is called as contract act.

Undoubtedly, contract act is a fundamental act. Maximum civil laws are written by following the contract act. The scope of this act is wide. Business, trading, marriage everything is done by contract act. We have to follow the rules and regulations of contract act to perform any kind of contract.

- **According to Willium Anson,** "The law of contract is intended to ensure that a man has been led to expect shall come to pass and that what has been promised to him shall be performed."
- **According to Upcounsel,** "Contract law is the legal body that encompasses the origination, enforcement and ultimate enactment of all legal contracts or agreements."

Anyone who conducts business uses contract law. Both companies and consumers use contracts when they buy and sell goods, when they license products or activities, for employment agreements, for insurance agreements and more. Contracts make these transactions happen smoothly and without any misunderstandings. They allow parties to conduct their affairs confidently. Contracts help make sure that the parties to a transaction are clear on its terms.

?	**Define of Contract Act.**

1.3 Definition of Contract
(চুক্তির সংজ্ঞা)

A contract is an agreement creating and defining obligations between the parties. And, every promise and every set of promises forming the consideration for each other, is an agreement. Section 2(h) of the Contract Act, 1872, provides the authoritative definition of a contract- **"An agreement enforced by law is a contract."**

1. **According to the Prof Salmond,** "The contract is an agreement creating and defining obligation between prates."
2. **According to Sir Fedric Pollock,** "Every agreement and promises enforceable act is a contract."
3. **According to Anson,** "A contract is an agreement enforce at law made between two or person by which right are acquired by one or more to act or forbearance on the part of the other.

From the above definition, we can find the following features of contract:

- An offer that specifically details exactly what will be provided;
- Acceptance, which is the agreement by the other party to the offer presented;
- Consideration, money or something of interest being exchanged between the parties;
- Capacity of the parties in terms of age and mental ability;
- The intent of both parties to carry out their promise; and
- Legally enforceable terms and conditions, also called object of the contract.

Example: When Salman offers to sell his house to Masud for Tk. 5,00,000.00, there is an obligation on Salman to sell and on Masud to buy the horse at the stipulated price. Such an agreement is therefore, enforceable by law. But an agreement between Salman and Masud to go

together to a picnic does not create any obligation on either side and is not, therefore, enforceable in law. The former agreement is, therefore, a contract, while the latter is not.

From the definition, it is found that, to be a lawful contract, an agreement is necessary and that agreement must be lawful that is enforceable by law. A contract is thus a combination of two ideas— agreement and obligation .Obviously, every agreement does not create obligation.

?	**Define Contract or Agreement.** *[BBA Professional – 2011, 2012, 2015, 2017, 2019]*

1.4 The Essential Elements of A Contract
(চুক্তির অপরিহার্য উপাদান)

All agreements are not contracts. Only that agreement which is enforceable at law is a contract. An agreement which is enforceable at law cannot be contract. Thus, the term agreement is wider in scope than contract. All Contracts are agreements but all agreements are not contracts. An agreement enforceable by law is a contract. A contract has some essential elements. These are as follows:

1. **Offer and Acceptance (প্রস্তাব এবং স্বীকৃতি):** There must be a lawful offer by one party and a lawful acceptant of the offer by the other party or parties.
2. **Intention to create Legal Relationship (আইনগত সম্পর্ক্য স্থাপনের অভিপ্রায়):** In a contract, there must be an intention among the parties to create legal relationship.
3. **Lawful consideration (আইনসঙ্গত প্রতিদান):** Generally, an agreement is legally enforceable only when each of the parties gives something and gets something. An agreement to do something for nothing is usually not enforceable by law.
4. **Capacity of parties (পক্ষগুলোর চুক্তি সম্পাদনের সামর্থ্য):** The parties to an agreement must be legally capable of entering into an agreement. Sec-11 of Contract Act-1872 & Section 3 (1) & (2) of the Majority Act-1875 –

   "Every person is competent to contract who is of:

   - ✓ the age of majority
   - ✓ sound mind and
   - ✓ not disqualified from contracting

   (By any law to which he is subject.) Insolvency Act-1997

   (As per Section 12 of Contract Act-A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgment as to its effect upon his interests)
5. **Free consent (স্বাধীন সায় বা সম্মতি):** An agreement must be based on the free consent of all the parties. Coercion, undue influence, mistake, misrepresentation, and fraud are not accepted here.

6. **Legality of the object (উদ্দেশ্যের আইনগত বৈধতা):** The object for which the agreement has been entered into must not be illegal or opposed to public policy.

7. **Certainty (নির্দিষ্টতা বা নিশ্চয়তা):** The agreement must not be vague. It must be possible to ascertain the meaning of the agreement. Agreements, the meaning of which is not certain or capable of being made certain, are void" (Section-29)

8. **Possibility of performance (সম্পাদনের সম্ভাব্যতা):** The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced. An agreement to do an act impossible in itself is void. (Section-56)

9. **Void agreements (বাতিল সম্মতি):** There are some void agreements. These are:

   a) Agreement in restraint to marriage (বিবাহে প্রতিবন্ধকতা সৃষ্টিকারী চুক্তি);

   b) Agreement in restraint to trade (ব্যবসায়ে প্রতিবন্ধকতা সৃষ্টিকারী চুক্তি);

   c) Agreement in restraint of proceedings (আইনগত কার্যক্রমে প্রতিবন্ধকতা সৃষ্টিকারী চুক্তি);

   d) Agreements having uncertain meaning (যেসব চুক্তির অনির্দিষ্ট অর্থ রয়েছে); and

   e) Wagering agreement (বাজি চুক্তি)।

10. **Writing, Registration and Legal formalities (লিখন, নিবন্ধন এবং আইনগত আনুষ্ঠানিকতা):** An oral contract is a perfectly good contract except in those cases where writing or registration is required by some statute. In law writing is required in case of lease, gift, sale and mortgage of immovable property, negotiable instrument, Memorandum and Articles of Association of a Company (Section-25)

An agreement which fulfils all the essential elements is called a contract. So, it has been rightly said that "every contract is an agreement but all agreements are not contracts".

?	Explain the essential elements of a contract. "All agreements are not contract but all contracts are agreement"- Explain. What is offer and acceptance? **[BBA (Prof.) 2010, 2013, 2014, 2017]**

1.5 Difference between Agreement and Contract (এগ্রিমেন্ট এবং কন্ট্রাক্ট এর মধ্যে পার্থক্য)

Let us see how a contract and agreement are different from each other. This will help us summarize and make a map of all the important concepts that we have understood. The differences between agreement and contact are shown below:

Contract	Agreement
A contract is an agreement that is enforceable by law.	A promise or a number of promises that are not contradicting and are accepted by the parties involved is an agreement.

A contract is only legally enforceable.	An agreement must be socially acceptable. It may or may not be enforceable by the law.
A contract has to create some legal obligation.	An agreement doesn't create any legal obligations.
All contracts are also agreements.	An agreement may or may not be a contract.

?	**Show the Difference between Agreement and Contract.** **[BBA (Prf.) 2012, 2019]**

1.6 Various Types of Contract or Agreement (বিভিন্ন ধরনের চুক্তিসমূহ)

There are various bases on which the contracts can be classified. The main bases for classification of contract are: Method of Formation (Creation); the time of Performance (Execution); Legality or Validity of the Contract (Enforceability) and the parties of the contract. There are various types of contract. These are as follows:

1. **Valid contract or agreement (বৈধ চুক্তি বা সম্মতি):** An agreement enforceable by law is a valid contract. A valid contract must have the essential elements of a contract.
2. **Void contract (বাতিল চুক্তি):** An agreement not enforceable by law is said to be void. Literally the word void means not binding in law'. Accordingly the term void contract 'implies a useless contract which has no legal effect at all. "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable" [Section 2(j)].
3. **Voidable contract or agreement (বাতিলযোগ্য চুক্তি বা সম্মতি):** An agreement which is enforceable by law at the option of one of the parties but not at the option of the other, is a voidable contract. An agreement which is enforced by law at the opinion of one or more of the parties thereto, but not at the opinion of the others, is a voidable contract [Section 2(i)].
4. **Un-enforceable contract or agreement (অবলবৎ যগ্য চুক্তি বা সম্মতি):** The agreement that cannot be enforced in a court because of some technical defect, is called unenforceable contract or agreement.
5. **Expressed contract (বর্ণিত বা বিবৃত চুক্তি):**The offer and acceptance of a contract if made in words, either expressed orally or in written words, the contract will be considered to be an expressed one.

   For instance Mr. A proposes Mr. B, I would like to sell my house for Tk. 3lack'and Mr. B replies -I agree'- this deemed to be an express contract. There are two types of expressed contract - Written contract and Oral contract.
6. **Implied contract (ইঙ্গিতগ্রাহ্য চুক্তি):** When a contract is implied from the conduct of a person, it is called an implied contract.

   For example, if a repairer starts to repair the watch of one person and the later permits it remaining silent knowingly that the first person is doing so to get a payment in exchange of this service, it will be treated as an implied by law.

7. **Quasi contract (আধা চুক্তি):** There are certain dealings which are not contracts strictly though the parties act as if there is a contract there. These contracts are called quasi contract.
8. **Executed contract (সম্পাদিত চুক্তি):** There are some contracts where the parties perform their obligations immediately, as soon as the contact is formed, is called executed contract.
9. **Executors contract (সম্পাদনযোগ্য চুক্তি):** In this contract the obligations of the contract is supposed to be performed at the later period of the formation of the contract. There is no limitation of time for the performance of the contract in this regard. The contract itself suggests such limitation, unless it is prescribed by law.
10. **Bilateral contract (দ্বিপাক্ষিক চুক্তি):** There must be at least two parties to the contract. Therefore, all contracts are bilateral or multilateral. Where there are two or more parties of a contract and both of the parties have their obligations on each other, the contract is said to be a bilateral contract.
11. **Unilateral contract (এক পাক্ষিক চুক্তি):** In a contract, where one party has to fulfill his obligations whereas the other party has already performed his obligations, it is called unilateral contract.

So, basis upon the formation, legality, time span, and party concern contract or agreement can be classified in the abovementioned way. Business requires different types of agreement depend on the circumstances.

?	**What are the various types of contract or agreement?**

1.7 Definition of Offer (Proposal) and Acceptance
(প্রস্তাব (প্রস্তাবনা) এবং স্বীকৃতির সংজ্ঞা)

Offer and acceptance are elements required for the formation of a legally binding contract. The expression of an offer to contract on certain terms by one person (the "offeror") to another person (the "offeree"), and an indication by the offeree of its acceptance of those terms.,

- **Offer/Proposal (প্রস্তাব):** When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other, he is said to make a proposal.

  The person making the offer is called the 'Offeror' and the person to whom the offer is made is called 'Offeree'.
- **Acceptance and Promise (স্বীকৃতি এবং অঙ্গীকার):** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

From the above discussion it's clear that offer and acceptance both are required in order to form a legal bonding between the parties.

?	**Define offer (Proposal) and acceptance.** *[BBA (Prof.) 2016, 11, 09, 07, 06, 05]*

1.8 The Rules of Regarding Offer
(প্রস্তাব সংক্রান্ত বিধি)

An offer to be valid must fulfill the conditions in order to enter into agreement. The contract act contains various rules regarding offer or proposal. The rules regarding offer are as follows:

1. **Proposal can be either expressed or implied (প্রস্তাব ব্যক্তও হতে পারে আবার অব্যক্তও হতে পারে):** Proposal or an offer may be expressed or implied. When an offer is made stating in words or in writing, it is called an express offer. On the other hand, when an offer is implied from the conduct of a person, it is called an implied offer. Section 9 of the Contract Act, 1872 says, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

   Express Offer: An express offer is made by words spoken or written.

   Examples:

   (i) A says to B, "Will you purchase may car for Tk. 15,000? It is an oral offer.

   (ii) A, through a letter asks B to buy his car for Tk. 15,000. It is a written offer.

   Implied Offer: An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

   Example:

   (i) Public Transport, like, Railways. Buses in Dhaka or Ships in Barishal offer to carry passengers for a certain fare on a particular route.

   (ii) Public Telephones or Weighing Machines in public places like, Railway Stations or Cinema Houses offer their services for a certain amount, say one taka.

2. **Offer can be made for particular person, class or people at large (প্রস্তাব কোন নির্দিষ্ট ব্যক্তি, শ্রেণী বা সর্বসাধারণের উদ্দেশ্য করে করা যেতে পারে):** Offer can be made for particular person, class or people at large. An offer made to a definite person is called a "Specific offer". An offer sent to all persons is called a "General offer".

   Specific offer: A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.

   Example:

   A offers to sell his watch to B for Tk. 200. This is a specific offer made to B. It is B alone who can accept this offer and no one else can accept this offer, i.e., C or D cannot accept this offer.

   General offer: A general offer is made to the world at large. Therefore, it can be accepted by any person.

Example:

(i) A advertised in a Newspaper that he would give Tk. 100 to anyone who finds and returns his lost dog.

(i) A company advertised that a reward of Tk. 1,000 would be given to any person who contracted influenza after using the medicine (Smoke balls) made by the company according to the printed directions. One lady, called Mrs. Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza. She filed a suit to recover the reward of Tk. 1,000. The Court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such, she was entitled to recover the reward from the company.

3. **Legal relationship is required (আইনানুগ সম্পর্ক্য প্রয়োজন):** The proposal must be one which is capable of creating a legal relation. If there is no intention to create legal relation rather the offer prevail merely an intention to create social relation, that very offer will not be considered as lawful offer.

Example:

A promised to pay Tk. 3,000 to his wife every month. Later, A failed to pay the amount. The wife filed a suit against the husband to recover the amount. The Court held that she could not recover as the promise was not made with an intention to create any legal relationship.

4. **Terms of offer must be definite (প্রস্তাবের শর্তাবলী সুনির্দিষ্ট হতে হবে):** The terms of the offer must be definite, unambiguous and not vague.

Example:

A has two cars – Ambassador and Fiat. He agrees to sell one of his cars to B for Tk. 20,000.

It is not clear as to which of the cars A has agreed to sell. A might be thinking to sell the Ambassador car while B might be thinking to purchase the Fiat car. The offer is not definite.

5. **A mere statement of intention is not an offer (কেবলমাত্র ইচ্ছার বহিঃপ্রকাশই প্রস্তাব নহে):** Mere intentions are not sufficient to constitute an offer. Advertisements, price quotations of prices, catalogue, time-table of bus or train are not proposals, if someone makes any statement regarding his any intention during a conversation of course that will not suffice to constitute an offer, even though the person to whom such intention is expressed acts accordingly, there will be no offer, so no question of acceptance and as such of any contract.

Example:

A advertised to sell certain furniture by auction, B reached A's house to purchase the furniture. However, A changed his mind not to sell the furniture. B cannot compel A to sell the furniture or even to recover his damages, i.e., conveyance charges and damages for inconvenience caused to him due to cancellation of the sale.

It should be noted that a general offer can be made through advertisement if the terms are certain and capable of being accepted.

Example:

A lost his camera in a Public bus. He announced a reward of Tk. 100 to the finder who may return it to him. B found the camera after reading the advertisement and returned it to him. B is entitled to the reward.

6. **An offer must be communicated to the Offeree (প্রস্তাব অবশ্যই প্রস্তাব গ্রহীতাকে জানাতে হবে):** A person cannot accept an offer unless he knows the existence of the offer.

   Example:

   G sent his servant L to trace his lost nephew. Later on G, announced a reward for tracing the boy. L without knowing about the advertisement of the reward traced the boy and restored him to G. When L came to know of the reward, he claimed it. G refused to give the reward. The Court held that L was not entitled to recover the reward as the offer was not communicated to L. He could not accept an offer which he did not know.

7. **An offer may be conditional (প্রস্তাব শর্তসাপেক্ষ হতে পারে):** An offer may be conditional. In such case, the conditions must be clearly communicated to the Offeree. Without knowledge of the condition of an offer if a person accepts an offer, the offeror cannot claim the fulfillment of the condition. But if the conditions are clearly written or expressed and should have been known to the offeree he cannot pled the ignorance of the conditions.

   Example:

   A tells B, "I may sell my Television if I can get Tk. 2,000 for it. It is not an offer as it has not been made with a view to get the consent of B. It is a mere declaration of intention. Therefore, B cannot accept it by saying. "I can pay you Tk. 2,000 for it." B is not accepting A's offer but is making his offer which A may or may not accept.

So, these are the various rules regarding offer or proposal which actually require following to establish a legal agreement. And the acceptor is not bound to express his consent without the legal offer which is closely tied with an offer.

?	**Discuss the rules regarding offer.**	***[BBA (Professional) 2016, 06]***

1.9 How is an Offer Made?
(কিভাবে অফার দেওয়া হয়?)

An offer can be made by any act or omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it to other An offer can be made by following ways:

1. ***By words (whether written or oral):*** The written offer can be made by letter, telegram, fax, email, advertisement, etc. The oral offer can be made either in person or over telephone.
2. ***By conduct:*** Offer by conduct may be made by positive act or sign. However silence of a party can in no case amount to offer by conduct.

3. ***By omission:*** An offer can also be made by a party by omission (to do something). This includes such conduct or forbearance on one's part of that the other person takes it as his willingness or assent

? **How is an Offer Made?**

1.10 Definition of Acceptance (স্বীকৃতির সংজ্ঞা)

Acceptance definition law involves assenting to the terms made in an offer. It is vital to judge acceptance objectively and make sure that it is stated or expressly implied in the conduct of the person offering it. For a contract to be binding, the acceptance of the offer must be relayed in a way that is authorized, requested, or reasonably expected by the person offering.

It is often said that acceptance is to an offer what a lighted match is to a barrel of gunpowder. For a successful contract, there must be a valid offer followed by the offer being accepted. Let us learn more about the essentials of a valid acceptance.

The **Contract Act 1872** defines acceptance in Section 2 (b) as "***When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.***"

So as the definition states, when the offeree to whom the proposal is made, unconditionally accepts the offer it will amount to acceptance. After such an offer is accepted the offer becomes a promise.

A contract, or lawful pact made between two groups or individuals, is formed when an individual or group agrees to the terms of a proposal. Further definitions state the following:

- An acceptance of an offer indicates that the offeree agrees to be subject to the terms stated in the offer.
- Acceptance is the last expression made in agreeing to the conditions of a proposal.
- Acceptance indicates an individual or group's compliance in establishing a contract.
- A contract cannot exist if there has not been acceptance.

Say for example: A offers to buy B's car for taka two lacs and B accepts such an offer. Now, this has become a promise.

When the proposal is accepted and it becomes a proposal it also becomes irrevocable. An offer does not create any legal obligations, but after the offer is accepted it becomes a promise. And a promise is irrevocable because it creates legal obligations between parties. An offer can be revoked before it is accepted. But once acceptance is communicated it cannot be revoked or withdrawn.

? **Define of Acceptance.**

1.11 The Rules of Regarding Acceptance
(স্বীকৃতি সংক্রান্ত বিধি)

According to Section 2(b) of The Contract Act, 1872, "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise."

An acceptance to be valid must fulfill certain conditions which are discussed below:

1. **Absolute and Unqualified (অকাট্য ও শর্তহীন):** According to Section 7(1) of The Contract Act, 1872, "In order to convert a proposal into a promise, the acceptance must be absolute and unqualified." It means, that an offer must be accepted a, it is without any reservation, variation or condition. A qualified and conditional acceptance amounts to marking of a counter offer which put, an end to the original offer and it cannot be revived by subsequent acceptance.

   Let us see an example. A offers to sell his cycle to B for 2000/-. B says he accepts if A will sell it for 1500/-. This does not amount to the offer being accepted, it will count as a counteroffer.

2. **Consequences of not accepting the offer in the prescribed manner (নির্ধারিত পদ্ধতিতে প্রস্তাব গ্রহণ না করার পরিণতি):** If the offer is not accepted in the prescribed manner, the offerer may approve or reject such acceptance. If the offeror wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance because it is not in the prescribed manner. If he does not do so within a reasonable time the presumption will be that he doesn't mind the offer being accepted in a different mode and will be bound by such acceptance.

   Example: A offers to sell his farm to B for ten lakhs. He asks B to communicate his answer via post. B e-mails A accepting his offer. Now A can ask B to send the answer through the prescribed manner. But if A fails to do so, it means he has accepted the acceptance of B and a promise is made.

3. **Communication (যোগাযোগ):** The acceptance must be signified (i.e. indicated or declared). In other words, the acceptance is complete only when it has been communicated to the offerer. A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct.

   Example: When A offers to supply B with goods, and B is agreeable to all the terms. He writes a letter to accept the offer but forgets to post the letter. So since the acceptance is not communicated, it is not valid.

4. **Time Limit (সময় সীমা):** The acceptance must be given within the time prescribed (if any) or within a reasonable time (if no time is prescribed). What is reasonable time depends upon the facts and circumstances of the case.

5. **Before Lapse of offer (প্রস্তাব তামাদি হওয়ার পূর্বে):** The acceptance must be given before the offer lapses or is withdrawn. In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relations.

6. **Acceptance must be expressed in some usual or reasonable way (কোন সাধারণ বা যুক্তিসংঙ্গত উপায়ে স্বীকৃতি জানাইতে হবে):** Acceptance may be expressed by word of mouth, telephone, telegram or by post. Acceptance may also be expressed by conduct.

   Example: If the offeror prescribes 'acceptance by telegram' and the offeree sends acceptance through a messenger, there is no acceptance of the offer, if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

7. **Mental acceptance is not an acceptance (মানসিক স্বীকৃতি কোন স্বীকৃতি নয়):** No contract is formed. If the Offeree remains silent and does nothing to show that he has accepted the offer.

   Example: A person received an offer by letter. In reply he wrote a letter of acceptance, put the letter in his drawer and forgot all about it. Held, this uncommunicated acceptance did not amount to acceptance and so did not complete the contract ***(Brogden vs Metropolitan Rly. Co)***.

8. **The mode of acceptance (স্বীকৃতি জানানোর পদ্ধতি):** Where the offeror prescribes a particular mode of acceptance, the offeree must follow it.

9. **When acceptance is complete (কখন স্বীকৃতি সম্পূর্ণ হয়):** As against the proposer, an acceptance is complete when the news of the acceptance is put in a course of transmission to the proposer. And, as against the acceptor, when the news of the acceptance is reached to the proposer.

10. **The acceptance must be made while the offer is in force (প্রদত্ত প্রস্তাব বলবৎ থাকাকালে স্বীকৃতি জানাতে হবে):** The acceptance must be made while the offer is in force. That is, an acceptance must be done before an offer has been revoked or has been lapsed.

Thus, the acceptance of an offer to be legally effective must satisfy the above mentioned rules. Only legal acceptance can create the agreement. It finally come with a successful completion of business.

?	**Discuss the rules regarding Acceptance.**

1.12 Communication of Offer and Acceptance
(প্রস্তাব এবং স্বীকৃতি জ্ঞাপন)

Section -3 of contract act states that- the communication of proposals, the acceptance of proposals and the revocation of proposals and acceptance, respectively are deemed to be made by any act or omission of the party proposing , accepting or revoking by which he intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it. An offer and its acceptance, to be valid must be communicated to the other party.

- **Communication of offer (প্রস্তাব জ্ঞাপন) (Se.4):** The communication of an offer is complete when it comes to the knowledge of the person to whom it is made. When an offer is made by post, its communication will be complete when the offeree receives the letter.
  Example: A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.
- **Communication of Acceptance (স্বীকৃতি জ্ঞাপন) (Sec.4):** The communication of an acceptance is complete:
  (i) as against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor to withdraw, and
  (ii) as against the acceptor, when it comes to the knowledge of the offeror.
  Example: B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete as against A, when the letter is posted; as against B when the letter is received by A.
- **Method Communication of offer and acceptance Offer and acceptance can be communicated by the following three ways:**
  1. **By the words of mouth (মুখের কথা দ্বারা):** Offer and acceptance can be communicated among the parties through direct conversation or through the help of telephone.
  2. **By writing (লিখিতভাবে):** Offer and acceptance can also be communicated in writing. As for an example: Job circular may be in written form.
  3. **By conduct (আচরণের মাধ্যমে):** An offer may also be communicated through the conduct of the concerned parties. As for an example: Buses going along the street and picking up passengers are example of such offer and acceptance.

These are the various ways of communicating an offer and acceptance. Different mode ease the opportunity to communicate between or among the parties in a meaningful way.

?	**How an offer and acceptance is communicated?**	***[BBA (Prof.) 2016, 13,12, 2019]***

1.13 Revocation of An Offer (প্রস্তাবের প্রত্যাহার)

The term revocation means taking back or withdrawal. According to law, a proposal may be revoked at any time before the communication of its acceptance is completed as against the proposer, but not afterwards. An offer comes to an end and is no longer open to acceptance. Sections 6 of contract act deals with various modes of revocation of offer, these cases are as follows:

1. **By communication of the notice of revocation (বিজ্ঞপ্তির মাধ্যমে প্রত্যাহার):** An offer may be revoked by the communication of the notice of revocation. It may be revoked only before its acceptance is complete as against the offeror. The acceptance is complete as against the offeror when the letter of acceptance is put in transmission to him. Notice of revocation will take effect only when it comes to the knowledge of the offeree.
2. **By lapse of specified time (সময় উত্তীর্ণ হলে):** If time is mentioned in the offer for its acceptance, it is revoked by the lapse of time. If no time is mentioned then it lapses on the expiry of reasonable time.
3. **By the failure of the acceptor to fulfill a condition precedent to the acceptance:** An offer lapses if the offeree fails to fulfill a condition precedent to the acceptance.
4. **By the death or insanity of the proposer (প্রস্তাবকারীর মৃত্যু বা মস্তিষ্ক বিকৃতি ঘটলে):** The death of the proposer puts an end to the offer, provided the fact of death or insanity comes to the knowledge of the acceptor before acceptance. If the proposer dies after the acceptance of the offer, the legal representatives of the proposer shall be bound by the contract. The acceptance of an offer in ignorance of the death or insanity of the proposer is valid. But according to English Contract Law, no notice of death is required to the offeree. An offer shall automatically stand revoked in the case of death or insanity of the proposer.
5. **Counter offer (পাল্টা প্রস্তাব):** A counter offer also amounts to a revocation of the original offer.
7. **By refusal (প্রত্যাখ্যানের মাধ্যমে):** A proposal once refused is dead and cannot be revived by its subsequent acceptance.

It is to be noted here that the rejection of a proposal by the person to whom it is made is wholly distinct from revocation. Hence, an offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor. Thus, the proposer may revoke his/her offer by a speedier mode of communication which will reach before the letter of acceptance is posted by the acceptor.

?	**Describe the ways of revocation of an offer.** **Or, how and when an offer can be revoked?** ***[BBA (Prof.) 2016, 11, 09, 07, 06]***

1.14 Definition of Option
(অপশনের সংজ্ঞা)

An option is a conditional contract to do something. An option contract, or simply option, is defined as "a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer."

An option contract is a type of contract that protects an offeree from an offeror's ability to revoke their offer to engage in a contract.

Example: Nazrul is the owner of a house, agrees in consideration of taka 500, to give Tahmid an option to buy the house within six months at a certain price.

?	**What do you mean by option?**

1.15 Definition of Consideration
(প্রতিদানের সংজ্ঞা)

In Latin, **consideration** is known as 'Quid pro quo'. It means something in return. It is the benefit received by a party to the contract in return of the promise made by him.

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promise to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise". - **Sec.2 (d), the Contract Act, 1872.**

Example: A promises to pay B Tk. 500.00 if B promises to canvass votes for him. B promises to do so. B's promise of the act is the consideration for A's promise.

Consideration is an essential element in a contract. Subject to certain exceptions, an agreement is not enforceable unless each party to the agreement gets something. This "something" is called consideration. Actually, consideration means a reasonable equivalent or benefit passed on by the Promisor to the Promisee.

?	**What do you mean by Consideration?** ***[BBA (Professional) 2009, 2016, 2017, 2019]***

1.16 Types of Consideration
(প্রতিদানের প্রকারভেদ)

In consideration something in return is desire that is received by one party over the other according to contract that is return of promise made by other party. There are basically three types of consideration. These are as follows:

1. **Past consideration (অতীত প্রতিদান):** When the consideration of one party was given before the date of the promise, it is said to be past consideration.

2. **Present consideration (বর্তমান প্রতিদান):** Consideration which moves simultaneously with the promise is called present consideration or executed consideration.
3. **Future consideration (ভবিষ্যৎ প্রতিদান):** When the consideration is to move at a future date, it is called future consideration or executory consideration.

These are the various types of consideration. Consideration basically depends on the time frame. Whether it is happening now, past or future.

?	**Discuss different types of consideration.**	*[BBA (Professional) 2009, 06]*

1.17 Rules/ Essential Elements or Factors of Consideration (প্রতিদানের বিধি /আবশ্যিক উপাদানসমূহ)

In every contract, every party must stand to gain something in return of what it agrees to do or not to do. This something given or received is the consideration. Consideration is the essential element of contract. An agreement without consideration cannot be contract and hence is not enforceable by law. If the person who makes the promise gains nothing in return of the promise made, such promise cannot be enforced against him. Hence the principle –'No consideration – No contract'. There are various rules regarding consideration. These are as follows:

1. **Request of the Promisor is essential (প্রতিশ্রুতিদাতার অনুরোধ থাকা আবশ্যক):** An act done without any request, is a voluntary act. It does not come within the definition of consideration.

   Example: Masud is going back home from work. On his way, he sees that his neighbor Jony's house is on fire. He immediately arranges for a water hose and manages to douse the fire. Masud cannot claim any reward for his effort because it was a voluntary act and was not done at the desire of Jony (promisor).
2. **The consideration must be real (প্রতিদান অবশ্যই বাস্তব হইতে হবে):** The consideration must have some value in the eye of law. It must not be sham or illusory.
3. **Consideration need not be adequate (প্রতিদান পর্যাপ্ত হওয়া অনাবশ্যক অর্থাৎ কম হইতে পারে):** An agreement is not void merely because of the consideration is inadequate if the consent of the party is given freely.
4. **The consideration must not be illegal (প্রতিদান অবশ্যই অবৈধ হবে না):** The consideration must not be illegal, immoral or opposed to public policy. If the consideration of the agreement is illegal or immoral or opposed to public policy cannot be enforced.

   Example: Peter offers Rs 10,000 to John to beat up his business rival. John beats him up but Peter refuses to pay him. John cannot file a suit for recovery since the consideration is against the law.
5. **The consideration may be either present, past or future (প্রতিদান বর্তমানের, অতীতের বা ভবিষ্যতের বিষয় হইতে পারে):** The consideration of any agreement may be either present, past or future.

6. **Consideration may move from the promisee or from any other person** (প্রতিদান প্রতিশ্রুতিগ্রহীতা বা অন্য কোন ব্যক্তির নিকট হইতে আসিতে পারে):Consideration may move from the promisee or from any other person.

   Example: Peter gifted his son, Oliver an apartment in the city with a condition that he pays a fixed amount of money to his uncle, John, every year. On the same day, Oliver executed a deed to pay a fixed amount of money to John every year. However, Oliver failed to pay and John filed a suit for recovery.

   Oliver pleaded that he was not liable since no consideration had moved from John. However, the court held the words 'promisee or any other person...' and allowed John to maintain his suit for recovery.

7. **It should be over and above the Promisors' existing obligations:** If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.

   Example: Masud receives a summons from the Court to appear before it as a witness for Jony. Jony promises to pay him Tk. 10,000 to appear in the Court. This contract is not valid because Masud is obligated by law to appear in the Court on receiving a summons.

These are the various elements or factors of consideration. It enforce during the agreement. This factor helps to make an agreement considerable for both the parties.

?	**Discuss the rules regarding consideration.** ***[BBA (Professional) 2007, 2017]*** **Or, Discuss the essential elements or factors of consideration.**

1.18 "No Consideration No Contract"- Exceptions To The Rule ("প্রতিদান ছাড়া চুক্তি হয়না" - নিয়মের ব্যতিক্রম)

Every agreement to be enforceable at law must be supported by valid consideration. An agreement made without consideration is void and is unenforceable except in certain cases. Section 25 specifies the cases where an agreement though made without consideration will be valid. These are as follow:

1. **Natural love and affection** (প্রাকৃতিক ভালবাসা এবং স্নেহ) **[Sec. 25(1)]:** An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. An agreement without consideration will be valid provided-

   (a) it is expressed in writing;

   (b) it is registered under the law for the time being in force;

   (c) it is made on account of natural love and affection;

   (d) it is between parties standing in a near relation to each other.

   All these essentials must be present to enforce an agreement made without consideration.

2. **Compensation for services rendered (পরিষেবার জন্য ক্ষতিপূরণ প্রদান) [Sec. 25(2)]:** An agreement made without consideration will be valid if it is a promise to compensate wholly or in a part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. To apply this rule, the following essentials must exist:
   (a) The act must have been done voluntarily;
   (b) For the promisor or it must be something which was the legal obligation of the promiser;
   (c) The promisor must be in existence at the time when the act was done;
   (d) The promisor must agree now to compensate the promisee.
3. **Time-barred debt (স্বল্প-সময়ের ঋণ) [Sec. 25(3)]:** A promise to pay a time-barred debt is also enforceable. But the promise must be in writing and be signed by the promisor or his agent authorized in that behalf. The promise may be to pay the whole or part of the debt. An oral promise to pay a time-barred debt is unenforceable.
4. **Completed gifts (অতীত উপহার) [Exp. 1 to Sec. 25]:** Explanation 1 to section 25 provides that the rule 'No consideration, No contract' shall not affect validity of any gifts actually made between the donor and the donee. Thus if a person gives certain properties to another according to the provision of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.
5. **Agency (প্রতিনিধিত্ব) (Sec. 185):** There is one more exception to the rule. IT is given in section 185 which says that no consideration is needed to create an agency.
6. **Guarantee (জামিন) (Sec 127):** A contract of guarantee is made without consideration.
7. **Remission (অব্যাহতি প্রদান)(Sec 63):** No consideration is required for an agreement to receive less then what is due. This is called remission in the law.

These are the various exceptional cases under which a contract is enforceable even though there is no consideration.

?	**No consideration no contract"- Explain with exception.** *[BBA (Prof.) 2010, 2013, 2016]*

1.19 Difference Between the Rights of a Stranger to a Contract and of a Stranger to the Consideration
(চুক্তিতে তৃতীয় ব্যক্তির অধিকার এবং তৃতীয় ব্যক্তির প্রতিদানের মধ্যে পার্থক্য)

A stranger to a contract, one who is not a party to it, cannot file a suit to enforce it. But a stranger to the consideration can sue to enforce it provided he is a party to the contract. Promise without consideration is a gift; one made for a consideration is a bargain – said by Salmond and Windfield on their master piece "Law of Contracts". A contract between P, Q and R whereby P pays money to Q for delivering goods to R can be enforced by R although he did not pay any part of the consideration.

1.20 "Stranger To The Contract Cannot Sue Upon It"- Exceptions To The Rule ("চুক্তির তৃতীয় পক্ষকে আদালতে অভিযুক্ত করতে পারে না" - নিয়মের ব্যতিক্রম)

In general the rule is stranger who is not a party cannot sue. But in certain circumstances a person has the right to sue upon on a contract, in which they are not party. The following are the exceptions to the rule that a stranger to a contract cannot sue:

1. **A trust(ট্রাস্ট):** In trust deed beneficiaries is allowed to sue the trustee for enforcement of trustee's duties even though they are not contracting party. However, the name of the beneficiary must be clearly mentioned in the contract.
2. **Marriage settlements, partition (or) other family arrangements ((বিবাহ, বিচ্ছেদ বা অন্যান্য পরিবারিক ফয়সালা)):** When an agreement is made in connection of marriage settlements, partitions (or) other family arrangements and a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.
3. **Acknowledgement or Estoppels (স্বীকৃতি বা চূড়ান্ত স্বকৃতি):** The person, who becomes an agent of a third party by acknowledgement (or) Estoppel, can be sued by such third party.
4. **Assignment of contract (চুক্তিআরোপ):** Assignment means voluntary transfer of the rights by a person to another. In such a case an assignee becomes entitled to sue and enforce the rights which are assigned to him.
5. **Contracts entered into through an agent (প্রতিনিধির মাধ্যমে চুক্তিতেঅনুপ্রবেশ):** The principal enforce the contract entered into by his agent provided the agent act within the scope of his authority and in the name of the principal.
6. **Covenants running with the land (জমি-জমা সংক্রান্ত চলমানচুক্তি):** In case of transfer of immovable property, the purchaser of land (or) the owner of the land is bound by certain conditions (or) covenants created by an agreement affecting the land.

So, these are the exceptions of the rule. Apart from the general rule the stranger can sue on abovementioned situation. The stranger can sue on the certain situation that laid down by the contract act.

?	**Discuss the exceptions to the rule that a stranger to the contract cannot sue.** **[NU 2019]**

1.21 Definition of Void and Voidable Agreement (বাতিল এবং বাতিলযোগ্য চুক্তির সংজ্ঞা)

Void Contract is the contracts that cannot be enforceable, but the Voidable Contract is the contract in which one party has the right to enforce or rescind the contract.

- **Void Agreements (বাতিল চুক্তি):** An agreement not enforceable by law is said to be void. [Section 2(g)]

Examples of void agreements:

- An agreement made by incompetent parties (Minor/of unsound mind/Incapacitated Person for other reason) is void. (Sec-11)
- Any agreement with a bilateral mistake- as to essential fact(s) - is void. (Sec-20)
- Agreements which have unlawful consideration are void. (Sec- 10) (Sec-24)
- An agreement with a unlawful object is void. (Sec- 10) & (Sec-24)
- Agreements made without consideration is void. (Sec-25)

➢ **Voidable Agreements (বাতিলযোগ্য চুক্তি):** An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. [Section 2(i)]

Examples of voidable agreements: Contracts brought about by coercion, Fraud, mistake, undue influence, misrepresentation etc.

A voidable contract is a formal agreement between two parties that may be rendered unenforceable for a number of legal reasons. Reasons that can make a contract voidable include failure by one or both parties to disclose a material fact; a mistake, misrepresentation or fraud; undue influence or duress; one party's legal incapacity to enter a contract; one or more terms that are unconscionable; or a breach of contract.

?	**Define Void and Voidable agreements.**	**[NU 2019]**

1.22 Distinguish Between Void Agreement and Voidable Agreements (বাতিল এবং বাতিলযোগ্য চুক্তির মধ্যে পার্থক্য)

An agreement which does not contain the essential elements of a contract may be either void or voidable. Anyway, there are some differences between void agreements and voidable agreements. These are as follows:

No.	Basis	Void agreements (বাতিল চুক্তি)	Voidable agreements (বাতিলযোগ্য চুক্তি)
1.	**Definition(সংজ্ঞা)**	An agreement not enforceable by law is said to be void.	An agreement which is enforceable by law at the option of one of the parties but not at the option of the other, is a voidable contract.
2.	**Nature (ধরণ)**	This agreement is void from the beginning.	It is a good contract until it is avoided.
3.	**Liability and rights (দায় এবং অধিকার)**	Void agreement does not create any right or obligation on any person.	Voidable agreement creates rights and liability until it is in force.

4.	**Legality (আইনগত বৈধতা)**	A void agreement has no legal effect.	A Voidable agreement is legally enforceable until it is avoided.
5.	**Creation of obligation (বাধ্যবাধকতা সৃষ্টি)**	A void agreement does not create any legal obligation between the parties.	The sufferer can create obligation upon the other parties through accepting the contract.
6.	**Conversion(রূপান্তর)**	A void agreement can't be converted to a valid contract.	A voidable agreement can be converted to a valid agreement through accepting.
7.	**Example (উদাহরণ)**	An agreement made by a minor.	Contracts done by using coercion, undue influence, misrepresentation etc.

So, these are the various differences between a void agreement and a voidable agreement. Where void agreements are not enforceable by law but the voidable agreements are not enforceable by law.

?	**Distinguish between void agreements and voidable agreements.** *[BBA (Professional) 2011, 2016, 2019]*

1.23 Definition of Capacity To Contact
(চুক্তির সামর্থ্য-এর সংজ্ঞা)

The parties who enter in to contract must have capacity to do so. Capacity here means competency of the parties to enter in to contract.

According to Sec.10 an agreement becomes a contract, if it is entered in to between the parties who are competent to contract.

According to Sec.11 every person is competent to enter in to contract who (a) is of the age of majority according to the law to which he is subject.(b) is of sound mind, and (c) is not disqualified from contracting by any law to which he is subject.

Thus Section 11 declares the following persons to be incompetent to contract;

1. Minor
2. Persons of unsound mind, and
3. Persons disqualified by any law to which they are subject.

?	**What is meant by Capacity to Contract?**

1.24 Definition of a Minor
(নাবালকের সংজ্ঞা)

According to The Majority Act, 1875, a minor is a person who has not completed 18 years of age. In the following two cases, he attains majority after 21 years of age.

(1) Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act, 1890 or,

(2) Where the superintendence of a minor's property is assumed by a Court of Wards.

So, it is clear that till age 18 a person cannot enter into a contract and no responsibility, liability is incurred. But after maturity he have avail the access to be a party.

?	**Who is a Minor?**

1.25 The Rules Relationg To Minor's Agreement
(নাবালকের চুক্তি সংক্রান্ত বিধান)

A minor is a person who has not completed 18 year of age. He cannot be a party to make an agreement. The rules regarding the minor's or infant's agreements are as follows:

1. **Minor's agreement is a void agreement (নাবালকের চুক্তি একটি বাতিল চুক্তি):** An agreement by a minor is totally void. Because, a minor is incapable of judging what is good for him.
2. **Benefit of the minor is enforceable (নাবালকের সুবিধা বলবৎযোগ্য):** An agreement under which a minor has received a benefit is enforceable. As for an example, Agreements for the infant's education, service etc. is enforceable.
3. **Minor's liability for necessaries (নিত্য প্রয়োজনীয় জিনিসের ক্ষেত্রে নাবালকের দায়বদ্ধতা):** The minor's property is liable for the payment of a reasonable price for necessaries supplied to the minor.
4. **Minor not bound to return money (নাবালক টাকা বা সুবিধা ফেরৎ দিতে বাধ্য নয়):** A minor is not bound to refund any benefit or money which he has received under a void agreement.
5. **No estoppels ((প্রতিবন্ধকতা বিহীন)):** Though a minor falsely represent him as a major, and thereby induces another person to enter into an agreement with him, yet the minor is not bound to perform the obligations of the agreement.
6. **No ratification (অন অনুমোদিত):** A minor's agreement is void from the beginning. So, a minor on attaining majority cannot ratify an agreement entered into while he was a minor.
7. **No insolvency (দেউলিয়াত্ব মুক্ত):** A minor cannot be declared insolvent. Even though, in partnership agreement his liability can be raised up to his invested capital only.

8. **Partnership by minor (নাবালকের অংশীদারীত্ব):** A minor cannot enter into a contract of partnership. But he can be admitted into the benefits of a partnership with the consent of all the parties.
9. **A minor can be an agent (নাবালক প্রতিনিধি হতে পারে):** A minor can be an agent. He can also make, approve and deliver negotiable instruments.
10. **Position of minor's guardian (নাবালকের অবিভাবকের অবস্থান):** An agreement made by a minor is void but an agreement by his guardian on his behalf is valid, if such agreement is for the benefit of the minor.
11. **A company shares of a minor (কোম্পানীতে নাবালকের শেয়ারের মালিকানা):** A minor cannot be a member of a company.

Law protects minors against their own inexperience & against the possible improper designs of those more experienced. So, these are the various rules regarding the infants or minors contracts or agreement.

?	**Discuss the rules relating to infants contract according to Bangladeshi law.** **Or, Discuss the rules regarding the minor's agreement. BBA (Professional) 2008, 05**

1.26 Definition of "Sound Mind"
(সুস্থ মনের সংজ্ঞা)

One of the essential conditions of competency of parties to a contract is that they should be of sound mind. A sound mind for the purpose of contracting, is laid down in section 12 of the contract act.

"A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it & of forming a rational judgment as to its effect upon his interest." [Section 12]

- A person, who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.
- A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Example: A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

If a person is incapable of both, he suffers from unsoundness of mind. Whether a party to a contract is of sound mind or not is a question of fact to be decided by the Court. There is a presumption in favor of sanity. If a person relies on unsoundness of mind, he must prove it sufficiently to satisfy the Court.

?	**Define Sound Mind According to the Contract Law.**

1.27 Unsoundness of Mind May Arise From Different Reasons
(অনেক কারণে মনের অসুস্থা তৈরি হতে পারে)

If a person is incapable of both, he suffers from unsoundness of mind. Whether a party to a contract is of sound mind or not is a question of fact to be decided by the Court. There is a presumption in favor of sanity. If a person relies on unsoundness of mind, he must prove it sufficiently to satisfy the Court.

Unsoundness of mind may arise from-insanity or lunacy; idiocy, drunkenness and similar factors.

1. **Lunatics (উন্মাদ):** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter in to contract when he is of sound mind.
2. **Idiots (গর্ধপ):** An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiocy is permanent whereas lunacy denotes periodical insanity with lucid intervals. An agreement of an idiot, like that of a minor, is void.
3. **Drunken or intoxicated persons (মাতাল বা মাদকাসক্ত):** A drunken or intoxicated person suffers from temporary incapacity to contract, i.e., at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment.

However, persons of unsound mind are liable for necessaries supplied to them or to anyone whom they are legally bound to support.

?	**What are the reasons for arising unsoundness of mind?**

1.28 Different Types of Disqualified Persons
(অযোগ্য ঘোষিত ব্যক্তিদের প্রকারভেদ)

One of the essential conditions for the validity of an agreement is that all the parties to it must have capacity to enter into contracts. The third type of incompetent persons, as per section 11, are those who are "disqualified from contracting by any law to which they are subject."

1. **Alien enemies (বিদেশি শত্রু):** An alien (citizen of a foreign country) living in Bangladesh can enter into contracts with citizens of Bangladesh during peace time only, and that too subject to any restrictions imposed by the government in that respect. On the declaration of a war between his country and Bangladesh, he becomes an alien enemy and cannot enter into contracts. "Alien friend can contract but an alien enemy can't contract." Contracts entered into before the declaration of the war stand suspended and cannot be performed during the course of war, of course, they can be revived after the war is over provided they have not already become time- barred.

2. **Foreign sovereigns and ambassadors (বিদেশি শাসক এবং দূত):** One has to be cautious while entering into contracts with foreign sovereigns and ambassadors, because whereas they can sue others to enforce the contracts entered upon with them, they cannot be sued without obtaining the prior sanction of the central Government. Thus they are in a privileged position and are ordinarily considered incompetent to contract.
3. **Convict (আসামী):** A convict is one who is found guilty and is imprisoned. During the period of imprisonment, a convict is incompetent (a) to enter into contracts, and (b) to sue on contracts made before conviction. On the expiry of the sentence, he is at liberty to institute a suit and the law of limitation is held in abeyance during the period of his sentence.
4. **Married women (বিবাহিত নারী):** Married women are competent to enter into contracts with respect to their separate properties provided they are major and are of sound mind. They cannot enter into contracts with respect to their husbands' properties. A married woman can, however, act as an agent of her husband and bind her husband's property for necessaries supplied to her, if he fails to provide her with these.
5. **Insolvent (দেউলিয়া):** An adjudged insolvent (before an 'order of discharge') is competent to enter into certain types of contracts i.e. he can incur debts, purchase property or be an employee but he cannot sell his property which vests in the official receiver. Before 'discharge' he also suffers from certain disqualifications e.g. can't be a magistrate or a director of company or a member of local body but he has the contractual capacity except with respect to his property. After the order of discharge,' he is just like an ordinary citizen.
6. **Joint-stock company and corporation incorporated under a special act (বিশেষ আইনে নিবন্ধিত যৌথমূলধনী কোম্পানি এবং কর্পোরেশন):** A company/ corporation is an artificial person created by law. It cannot enter into contracts outside the power conferred upon it by its memorandum of association or by the provisions of its special act, as the case may be. Again being an artificial person (and not a natural person) it cannot enter into contracts of a strictly personal nature e.g. marriage.

Disqualified person cannot enter into an agreement. Section 11 of the contract act states different types of disqualified person.

?	**Discuss different types of Disqualified Persons.**

1.29 Definition of Free Consent
(স্বেচ্ছা স্বায়ের সংজ্ঞা)

Section -13 of the Contract act define Consent -Consent means acquiescence or an act of assenting to an offer. "Two or more persons are said to consent when they agree upon the same thing in the same sense".

Meaning of "Free Consent" [Sec.14]: consent is said to be free when it is not caused by:

1. Coercion as defined in Sec15, or
2. Undue Influence in Sec.16 or

3. Fraud as defined in Sec.17, or
4. Misrepresentation as defined in Sec.18 or
5. Mistake, subject to the provisions of Sec.20, 21 or Sec.22].

That means it is not enforceable at the option of either party. Other hand, when there is consent but is not free, the contract is usually voidable at the option of the party whose consent was so caused.

?	**What do you mean by free consent?** ***[BBA (Professional) 2012, 2013, 2015, 2017]*** **Or, State when consent is not said to be free.**

1.30 Definition of Coercion
(বল প্রয়োগের সংজ্ঞা)

When a person is compelled to enter in to a contract by the use of force by the other party or under a threat, "coercion "is said to be employed.

Coercion is the committing or threatening to commit, any act forbidden by the "The Penal Code,1860" or unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of any person to enter in to an agreement.(Sec.15).

Example: A threatens to shoot B if he (B) does not release him (A) from a debt which A owes to B. B releases A under the threat. The release has been brought about by Coercion.

When a person is compelled to enter in to a contract by the use of force by the other party or under a threat, "coercion" is said to be employed.

?	**Define Coercion.**

1.31 Features or Requisites of Coercion
(বল প্রয়োগের অপরিহার্য বৈশিষ্ট্য অথবা বিষয়)

Coercion has the distinguishable features. The provision of Section 15 can be analyzed here are the features:

1. Coercion means (i) the committing or threatening to commit any act, which is forbidden by the Penal Code, or (ii) the unlawful detaining, or threatening to detain, any property.
2. Coercion may proceed from any person including a person, who is not a party to the contract.
3. The act or threat, which constitutes coercion, may be directed against any person and not necessarily against the other party to the agreement.
4. The act must have been actually committed to induce a person to enter into an agreement.
5. It does not matter whether the Penal Code is or is not in operation, in the place, where coercion is employed.

So, the above mentioned features or requisites must exist in an agreement to treat it coercion. Coercion is basically forbidden by the penal court.

?	**Discuss the Features or requisites of Coercion.**

1.32 Consequences of Coercion
(বল প্রয়োগের ফলাফল)

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Under Section 19, when a contract is brought about by coercion, it is voidable at the option of the party, whose consent was so caused. The aggrieved party has the following options:

1. Have the contract set aside, or
2. Refuse to perform it and defend it on the ground of coercion, or
3. Abide by the contract, if he so desires and insist on its performance by other party.
4. Under Sec.72, if a person has paid money or delivered anything to another person, by mistake or under coercion, that money must be repaid or the thing received must be returned to him.

We can conclude that the provisions have given some right in favor of the aggrieved party who is suffered from the coercion. The aggrieved party avail the options which have been discussed here.

?	**What are the Consequences of Coercion?**

1.33 Definition of Undue Influence
(অনুচিৎ প্রভাবের সংজ্ঞা)

A contract is said to be induced by 'undue influence' where the consent is given by a person who is so situated in relation to another that the other person is in a position to dominate the will of the other.

Definition as per Section 16:

1. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.
   (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
   (b) When he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
3. Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the fact of it or on the evidence adduced, to be unconscionable, he burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

From the above definition we can conclude that one of the two parties to the contract is in a position to dominate the will and mind of the other party. This is presumed when the parties to the contract have a real or apparent authority over the other or one of the parties has got a fiduciary relationship which puts him in a position to win over the mind of the other party. Such position or relationship exists in the cases of minor and guardian; trustee and beneficiary; son and father, wife and husband or vice-versa.

?	**What do you mean by "Undue Influence" according to the Contract law?**

1.34 Consequences of Undue Influence
(অনুচিৎ প্রভাবের ফলাফল)

"When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the. Party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there under, upon such terms and conditions as the court may seem just." (Sec. 19-A). The consequences of undue influences are describing are describing hereunder:

1. It is voidable at the option of the party whose consent was so caused;
2. Such an agreement may be set aside absolutely; or
3. If the party who was entitled to avoid it has received any benefit thereunder, the court can set it aside upon such terms and conditions as may seem just;
4. The aggrieved party may, if he desires, treat the agreement as binding and enforce it against the other party.

Thus, the undue influence by a person, who is not a party to the contract, may make the contract voidable. If there any undue influence the above mentioned consequence will occur.

?	**What are the Consequences of Undue Influence?**

1.35 Distinction Between Coercion and Undue Influence
(বলপ্রয়োগ এবং অনুচিৎ প্রভাবের মধ্যে পার্থক্য

Contract made by coercion or undue influence is void. Hence, many people assume coercion and undue influence as same. But, there are some differences between them. These are as follows:

Basis	Coercion (বল প্রয়োগ)	Undue influence (অনুচিৎ প্রভাব)
1. Definition (সংজ্ঞা)	Coercion is the committing or threatening to commit, any act forbidden by the Penal code. It includes unlawful detaining of a person's property, to compel him to enter into an agreement.	Undue influence is a situation where one of the parties is in a position to dominate the will of the other and he uses the position to obtain an unfair advantage over the other.

2. **Physical vs. Mental** (শারীরিক বনাম মানসিক)	In coercion, physical force is used.	In undue influence, mental pressure is used.
3. **Prior relation** (পূর্ব সম্পর্ক)	There may not have any prior relation among the parties.	There exists a prior relation among the parties.
4. **Relatedness** (সংশ্লিষ্টতা)	Coercion can be related to a person or his property.	Undue influence is related to a person's mind only.
5. **Evidence of proof** (প্রমাণপত্র)	Coercion can be proved easily. Because, its effect is external.	Undue influence cannot be proved easily Because, its effect is internal.
6. **Consequence or Remedies** (পরিণতি বা প্রতিকার)	The aggrieved party can revoke or reject the contract and apply for compensation.	The aggrieved party can only revoke or reject the contract but cannot apply for compensation.

Finally, we can say that though many people consider coercion and undue influence the same, yet they are not same at all.

?	**Distinguish between "Coercion" and "Undue influence".** *[BBA (Prof.) 2011, 2013, 2015, 2019]*

1.36 Definition of Misrepresentation
(মিথ্যা বর্ণনার সংজ্ঞা)

Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any desire to defraud the other Party. There is no intention to deceive.

Section 18 of The Contract Act, 1872 defines and explains the term Misrepresentation. The term "Misrepresentation terms and includes-

1. The positive assertion, in a way or manner not warranted by the information of the person who's making it, of that which is not true, though that person believes it to be true;
2. Any breach of duty which, without an intention to deceive, gains an advantage of the person committing it, or any one claiming under such person, by misleading another person to his prejudice, or to the prejudice of any one claiming under him;
3. Causing, however innocently, a party or person to an agreement, to make a mistake as to the substance of the thing which is the subject matter of the said agreement.

A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter in to a contract is known as a representation. It may be expressed by words spoken or written or implied from the acts and conduct of the parties. A representation when wrongly made, either innocently or intentionally, is a misrepresentation.

?	**Define Misrepresentation.**

1.37 Definition of Fraud
(প্রতারণার সংজ্ঞা)

The term "Fraud" includes all activities committed by a person with a view to deceive another person. "To deceive" means to induce a man to believe that a thing is true which is false.

Section 17 of the Act defines fraud as –"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract.

- ✓ **Section 17 (1)** – the suggestion as to a fact of that which is not by one who does not believe it to be true – is known as suggestion of falsehood.
- ✓ **Section 17 (2)** – the active concealment of a fact by one having the knowledge or belief of the fact – is known as suppression of a fact.
- ✓ **Section 17 (3)** – a promise made without any intention of performing it. It means a promise made falsely with the intention of inducing the other party to make a reciprocal promise and thereby enter into a contract.
- ✓ **Section 17 (4)** – any other Act fitted or designed to deceive.
- ✓ **Section 17 (5)** – any such act or omission as the law specially declares to be fraudulent.

Fraud" exists when it is shown that, a false representation has been made knowingly, or without belief in its truth, or recklessly, not caring whether it is true or false, and the maker intended the other party to act upon it or there is a concealment of material fact.

?	**Define Fraud.**

1.38 Mere Silence/Non-Disclosure Vis-À-Vis Fraud
(নিছক নীরবতা / অপ্রকাশ মুখামুখি প্রতারণা)

The Explanation to Section 17 deals with cases as to when 'silence is fraudulent' or what is sometimes called 'constructive fraud,' The explanation declares that "mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless:

(i) he circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or

(ii) Silence is, in itself, equivalent to speech." It therefore follows that:

1. As a rule mere silence is not fraud because there is no duty cast by law on a party to a contract to make a disclosure to the other party, of material facts within his knowledge.
2. Silence is fraudulent, if the circumstances of the case are such that it is the duty of the person keeping silence to speak '. In other words, silence is fraudulent in contract of 'utmost good faith. These are contracts in which the law imposes a duty of abundant disclosure on one of the parties thereto, due to peculiar relationship of the parties or due to the fact that one of the parties has peculiar means of knowledge which are not accessible to the other.

3. **Fiduciary relationship:** When the parties stand in a fiduciary relation to each other, the person in whom confidence is reposed is under a duty to act with utmost good faith and to make a full disclosure of all material facts concerning the transaction known to him. Examples of a fiduciary relationship include those of principal and agent, solicitor and client, guardian and ward, and trustee and beneficiary.
4. Silence is fraudulent where the circumstances are such that "silence is, in itself, equivalent to speech. For example, B says to A-"If you do not deny it, I shall assume that the horse is sound." A says nothing. Hence A's silence is equivalent to speech. If the horse is unsound A's silence is fraudulent.

Thus mere silence in some extent creates fraud. In general rule silence is not fraud, but the provisions states that silence sometimes turn as a fraud.

?	**Is Silence amount to Fraud?** **Or, Can silence be Fraudulent?**

1.39 Distinction Between Misrepresentation and Fraud
(মিথ্যা বর্ণনা এবং প্রতারণার মধ্যে পার্থক্য)

A contract made by misrepresentation or fraud is void. Yet, there are some differences between Misrepresentation and Fraud. These are as follows:

Differentiating Points (পার্থক্যের বিষয়)	Misrepresentation (মিথ্যা বর্ণনা)	Fraud (প্রতারণা)
1. **Definition** (সংজ্ঞা)	Misrepresentation is an inaccurate statement regarding contract but the inaccuracy is not due to any desire to deceive the other party.	Fraud means all activities committed by a person with a view to deceive another person.
2. **Objective** (উদ্দেশ্য)	In misrepresentation, there is no intention to deceive.	In fraud, there is an intention to deceive.
3. **Nature of Fault** (ত্রুটির ধরণ)	If the statement is wrong but honest, it is a case of misrepresentation.	If the statement is dishonest, it is a case of fraud.
4. **Remedies** (প্রতিকার)	In case of misrepresentation, the only remedy is rescission. There can be no suit for damages.	In case of fraud, the aggrieved party can cancel the contract and sue for damages.
5. **Legality** (আইনগত বৈধতা)	Misrepresentation is not considered as an offence.	Fraud is considered as an offence.

Thus it can conclude that misrepresentation take place due to inaccuracy not intend to deceive whereas fraud is intend to deceive the other parties. Though it intentional or unintentional the remedies are different.

?	**Distinguish between Misrepresentation and Fraud.**	***[BBA (Prof.) 2013, 10, 07]***

1.40 Definition of Mistake
(ভ্রান্তির সজ্ঞা)

Mistake may be defined as a wrong belief about something. Consent cannot be said to be free when an agreement is entered into under a mistake. An agreement is valid only when the parties agree upon the same thing in the same sense.

Mistake is erroneous belief about something. It may be a (1) Mistake of law, or (2) Mistake of fact.

1. Mistake of law: It may be - (a) Mistake of law of the country (b) Mistake of law of foreign country
2. Mistake of fact: Mistake of fact may be - (a) Bilateral Mistake, or (b) Unilateral Mistake.

Mistakes are categorized as a Mistake of Fact, Mistake of Law, or mutual mistake. A mistake of fact occurs when a person believes that a condition or event exists when it does not. A mistake of law is made by a person who has knowledge of the correct facts but is wrong about the legal consequences of an act or event.

?	**What do you mean by "Mistake" according to the Contract law?**

1.41 Rules of Regarding Mistake
(ভ্রান্তি সংক্রান্ত বিধি)

Mistake is a wrong belief about something. There are different rules regarding mistake. The Contract act lays down the following rules regarding mistakes:

1. **Mistake of law (আইন সংক্রান্ত ভ্রান্তি):** Mistake on a point of contract law does not affect the contract. Mistake on a point of law in force in a foreign country is to be treated as mistaken of fact. [Section 21]
2. **Mistake of fact (তথ্যগত ভ্রান্তি):** An agreement induced by a mistake of fact is void provided the following conditions are fulfilled. [Section 20]
   (i) Both the parties to the agreement are mistaken
   (ii) The mistake is as to a fact essential to the agreement.
3. **Opinion (অভিমত):** Section 20 provides that "An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.
4. **Unilateral mistake (একতরফা ভ্রান্তি):** Section 22 provides that "A contract is not voidable merely because it was caused by the one of the parties to it being under a mistake as to matter of fact." A mistake by one of the parties does not generally affect the validity of a contract.

From the above discussion it is clear that mistake can arise from mistake of law, mistake of fact or it might be unilateral mistake. The contract act vested it in its provision.

?	**What are the rules regarding Mistake according to the Contract law?**

ব্যবসায়ের আইনগত পরিবেশ ০৩ (খ)

1.42 Definition of Unlawful Consideration
(অবৈধ প্রতিদান এর সংজ্ঞা)

The consideration or object of an agreement is lawful, unless— —The consideration or object of an agreement is lawful, unless—" it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. [Section 23 in the Contract Act, 1872]

1. **Forbidden by Law (আইন দ্বারা নিষিদ্ধ):** Where the object or the consideration of an agreement is the performance of an act which is forbidden by law, the agreement is void. Acts or undertakings forbidden by law are those punishable under any statute as well as those prohibited (expressly or implicitly) by special legislation of Parliament and state legislatures.
2. **Defeat the Purpose of Provisions of any Law (উদ্দেশ্য ব্যর্থতা সংক্রান্ত আইনের বিধান):** Though the object or consideration for agreement, sometimes not directly forbidden by law, they are still forbidden if it nature defeats the purpose of provision of law. Agreement with such an object or consideration is void. Where a legislative enactment provides penalty for an act or promise, the performance of such an act or promise would amount to the defeat of that enactment, as it is implicit that the statute intends to forbid that act.
3. **Fraudulent (জালিয়াতি):** An agreement, the object of which is to defraud others is void. Where the parties agree to practice a fraud on a third person, not a party to the contract, their agreement is unlawful and void.
4. **Injurious to Person or Property (ব্যক্তি বা সম্পত্তির জন্য ক্ষতিকর):** Any agreement that implies or involves injury to person or others property, it is deemed unlawful and therefore void.
5. **Immoral (ব্যভিচারী):** If the object or consideration of an agreement is opposed to morality, it is void. The following examples would help understand the point better.
6. **Agreements Opposed to Public Policy (জনস্বার্থ বিরোধী চুক্তি):** The term public policy in a wider sense means restriction of freedom of persons from doing something in the larger interest or for the good of the community. In the context of the Contract Act, it restricts the freedom of persons to contract in certain areas which are detrimental to public policy. An agreement is void if the law regards it as opposed to public policy. In law, the doctrine of public policy covers many heads such as the following.
   - Trading with an alien enemy
   - Interference with administration of justice
   - Marriage brokerage agreements
   - Trafficking in public offices
   - Unfair or unreasonable dealings.

For becoming unlawful consideration the object must be illegal, opposed to public policy, or it might be fraudulent practice. The object forbidden by law is also unlawful consideration.

?	**Define Unlawful Consideration.**	**[BBA (Prof.) 2012]**

1.43 Agreements Against Public Policy
(জননীতি বিপক্ষে চুক্তি)

Certain types of agreements are harmful to Society. Such agreements are called agreements opposed to public policy. Such agreements are declared as Void by Status. There are certain agreements which are treated as contracts opposed to public policy. These are as follows:

1. **Trading with foreign enemy** (বিদেশী শত্রুর সাথে ব্যবসা)**:** An agreement between citizens of two countries at war is void. Anyway, such agreements are allowed where specially permitted by the Government.
2. **Agreements interfering with the course of justice** (বিচার কার্যে বাধা সৃষ্টিকারী চুক্তি)**:** Agreements interfering with the course of justice are opposed to public policy and void.
3. **Traffic in public offices** (সরকারী অফিস কার্যে বাধা সৃষ্টিকারী চুক্তি)**:** Agreements tending to injure the public services are against public policy and void.
4. **Agreements against professional duty** (পেশাগত দায়িত্ব পালন বিরোধী চুক্তি)**:** Agreements against a person's professional duty, are opposed to public policy and void.
5. **Agreements restraining personal freedom** (ব্যক্তি সাধীনতাকে খর্ব করে এমন চুক্তি)**:** Agreements restraining personal liberty, are against public policy and void.
6. **Agreements interfering with parental duties** (পিতা-মাতার দায়িত্ব পালনে বাধা সৃষ্টিকারী চুক্তি)**:** Agreements interfering with parental duties, are opposed to public policy and void.
7. **Agreements interfering with marital duties** (বৈবাহিক দায়িত্ব পালনে বাধা সৃষ্টিকারী চুক্তি)**:** Agreements interfering with marital duties, are opposed to public policy and void.
8. **Marriage brokerage agreements** (বিবাহে দালালি (ঘটকালী) করার চুক্তি)**:** According to English Law, marriage brokerage agreement is void. Because, the English people think that marriages should take place according to the free choice of parties. But in Bangladeshi Law, such brokerage in marriage is allowed.

So, these are the various agreements which are opposed to public policy and void. An agreement which is opposed to "Public Policy" cannot be enforced by either of the parties to it. Public Policy is the "Policy of the Law". The Courts ought to be very cautious in deciding a question of public policy. The doctrine must be applied with necessary variation.

?	**What are the agreements against Public Policy?** ***[BBA (Professional) 2006]***

1.44 Definition of Champerty and Maintenance
(সাফল্য এবং রক্ষণাবেক্ষণ-এর সংজ্ঞা)

When a person helps another person by money or otherwise in litigation in which he is not himself interested, it is called Maintenance,

When a person helps another person by money or otherwise in litigation in exchange of a promise to hand over a portion of the fruits of the litigation, it is called Champerty.

Maintenance and Champerty are always treated together by writers on the subject. Maintenance is called the genus of an offence of which Champerty is a species. Champerty is but a form of maintenance, though it is maintenance aggravated by an agreement to have a part of the thing in dispute.

Example: Shafik files a suit against Sajib for the recovery of a house. Raju promises to advance Tk. 1,000 to Shafik for the costs of the litigation and Shafik promises to give Raju a portion of the house if he is successful in his suit. This is a champertous agreement.

?	**What do you mean by Champerty and Maintenance?**

1.45 Contract Become Void Agreements
(চুক্তির বাতিল চুক্তিতে রূপান্তর)

There are certain situations when a contract becomes void. Void means that the contract is no longer valid and can't be enforced under state or federal laws. An agreement can be void because of mistake, lack of consideration, want of capacity etc. A list of void agreements is given below:

1. Lack of capacity (সামর্থ্যের অভাব);
2. Mutual mistake of fact (কোন বিষয় সম্পর্কে পারস্পারিক ভুল বুঝাবুঝি);
3. Unlawful Consideration or Object (বেআইনী প্রতিদান বা উদ্দেশ্যে);
4. Consideration or Object partly unlawful (প্রতিদান বা উদ্দেশ্যে আংশিকভাবে বেআইনী);
5. Agreements without consideration (প্রতিদানহীন চুক্তি);
6. Agreements in restraint of trade (ব্যবসায়ে প্রতিবন্ধকতা সৃষ্টিকারী চুক্তি);
7. Agreements in restrain of legal proceedings (আইনি কার্যক্রমে প্রতিবন্ধকতা সৃষ্টিকারী চুক্তি);
8. Uncertain Agreement (অনিশ্চিত চুক্তি);
9. Agreements by way of wager (বাজির মাধ্যমে সম্পাদিত চুক্তি);
10. Impossible acts (অসম্ভব কার্য সম্পর্কীত চুক্তি);
11. Agreements contingent on impossible event (অসম্ভব ঘটনার উপর নির্ভরশীল কোন চুক্তি);
12. Reciprocal void promises (পারস্পারিক বাতিল প্রতিশ্রুতি)

These types of issues can make a contract immediately "void on its face". This means that the contract is void as is and can't be changed or amended. In such cases, the court usually cancels the contract entirely.

?	**In what circumstances does a contract become void?**	***[BBA (Prof.) 2005]***

1.46 Definition of Contingent Contract
(অনিশ্চিত চুক্তির সংজ্ঞা)

A contingent contract contains a conditional promise. A promise is absolute or unconditional when the promisor undertakes to perform it in any event.

"Contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. [Section 31(A)]

Example: A contracts to pay B Taka 10,000 if B's house is burnt. This is a contingent contract.

A contingent agreement is not enforceable till the event on which it was to depend has arisen; but when that event has occurred, the contract, for all purpose, rests on the same footing as if it had been made positively and without reference to any contingency.

?	**What do you mean by Contingent Contract?** *[BBA (Prof.) 2011, 2014, 2016]*

1.47 Characteristics of Contingent Contract
(অনিশ্চিত চুক্তির বৈশিষ্ট্য)

The Contract Act has laid down various features regarding contingent contracts. The essential features of a Contingent Contract are as follows:

1. **Dependence on a Future Event (ভবিষ্যৎ ঘটনা উপর নির্ভরশীলতা):** The performance of contingent contract depends upon the happening or non-happening of some future event.
2. **Collateral Event (জামানতবিহীন ঘটনা):** The event must be collateral i.e., incidental to the contract.
3. **Uncertain Event (অনিশ্চিত ঘটনা):** The contingency is uncertain.

Thus a contingent contract have certain features. The features is require to incorporate at the times of agreement.

?	**What are the features of contingent contract?**

1.48 Rules Regarding Contingent Contracts
(অনিশ্চিত চুক্তি সংক্রান্ত বিধি)

The Contract Act has laid down various rules regarding contingent contracts. Section 32 to 36 of the contract act contain certain rules regarding contingent contract. They are summarized as below:

1. **The happening of a future uncertain event (ভবিষ্যতে অনিশ্চিত ঘটনার ঘটা):** Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void. (Section -32)

   Example: A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

2. **The non-happening of an uncertain future event (ভবিষ্যতের অনিশ্চিত ঘটনা ঘটা):** Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before. (Section 33)

   Example: A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

3. **When event to be deemed impossible (ঘটনা অসম্ভব বলে গণ্য করা হলে):** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. (Section 34)

   Example: A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

4. **The happening of an event within fixed time (নির্দিষ্ট সময়ের মধ্যে একটি ঘটনা ঘটলে):** Contracts contingent upon the happening of an event within a fixed time, become void if, at the expiration of the fixed time, such event has not happened, or if, before the time fixed, such event becomes impossible.

   When contracts become void which are contingent on happening of specified event within fixed time: Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible? (Section 35)

5. **Impossible event (অসম্ভব ঘটনা):** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. (Section 36)

   Example: A agrees to pay B 1,000 Taka if two straight lines should enclose a space. The agreement is void.

In conclusion we can say that the features are very essential to form a meaningful contract with the parties. The provision related with the contingent contract are discussed here.

?	**Discuss the Rules regarding contingent contracts.**

1.49 Difference Between Contingent Contract and Wagering Agreements (অসম্ভব চুক্তি এবং বাজি ধরার চুক্তির মধ্যে পার্থক্য)

It is defined by Section 31 of the Contract Act as "a contract to do or not to do something, if some event, collateral to such contract, does or does not happen." Where as a contingent contract and a wagering agreement are both dependent on the happening of a future event.

There are some differences between Contingent contract and Wagering agreements. These are as follows:

Differentiating points	Contingent contract (ঘটনা সাপেক্ষ চুক্তি)	Wagering agreements (বাজি চুক্তি)
1. **Definition** (সংজ্ঞা)	A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.	A wagering agreement is an agreement by which money is payable by one person to another on the happening or non-happening of a future, uncertain event.
2. **Legality** (বৈধতা)	A contingent contract is valid.	A wagering agreement is void.
3. **Happening of event** (ঘটনা ঘটা)	A contingent depends on the happening or non-happening of an event.	In wagering agreement, an event must be happened.
4. **Reciprocal promise** (পারস্পারিক প্রতিশ্রুতি)	Contingent contract may not contain reciprocal promises.	A wagering agreement consists of reciprocal promise.
5. **Interest of the parties** (পক্ষগুলোর স্বার্থ)	In a contingent contract, both party may have interest in the subject matter of the contract.	In a wagering agreement the parties have no interest except getting or paying money.
6. **Win-loss characteristics** (হার-জিতের বৈশিষ্ট্য)	In a contingent contract, there is no win-loss characteristic	In a wagering agreement, one party losses and another party wins
7. **Example** (উদাহরণ)	Asif contracts to pay Shihab Tk. 10,000 if Shihab's house is burnt.	Nahida agrees with Soma that if Bangladesh wins the cricket match, Nahida will pay TK. 50 to Soma. And, If Bangladesh loss then, Soma will pay TK. 50 to Nahid.

Though there are several differences exist between contingent contract and wagering agreements. Although wager is a contingent agreement, yet there are certain points of difference between the two.

?	**Discuss the Differences between Contingent contract and wagering agreements.**

1.50 By Whom a Contract May Be Performed
(যাদের দ্বারা চুক্তি সম্পাদিত হতে পারে)

The contract has been identified the person who can perform in a contract. The promise under a contract can be performed by any one of the following:

1. **By the promisor himself (প্রতিশ্রুতি দাতা দ্বারা):** In the case of a contract involving personal skill, taste or credit, e.g., a contract to paint a picture, a contract of agency or service; the promisor must himself fulfill the contract.

   Section 40 states thus, "if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be fulfill by the promisor himself, such promise must be performed by the promisor."

   Example: A promises to paint a picture for B. A must fulfill this promise personally.

2. **By the promisor or his agent (প্রতিশ্রুতি দাতা বা তাহার প্রতিনিধি দ্বারা):** In the case of a contract of impersonal nature; e.g., a contract of sale of goods or a contract to lend a sum of money; the promisor himself or his agent mat fulfill the contract. (Section 40).

   Example: A promises to pay B a sum of money. A may fulfill this promise, either by personally paying the money to B or by causing it to be paid to B by another.

3. **By the legal representatives (আইনি প্রতিনিধিদের দ্বারা):** In case of the death of the promisor before performance, the liability of performance falls on his legal representatives, unless a contrary intention appears from the contract (Section 37). Thus, in the case of contracts involving personal skill, the heir or legal representatives of a deceased promisor are not bound to perform the contract. Such contracts come to an end on the death of the promisor.

   The rule of law is: "a personal cause of action comes to an end with the death of the person concerned." In the case of contracts not involving personal considerations, the legal representatives are bound to fulfill the contract. But their liability is limited to the estate of the deceased which has come to their hands, in case of breach of contract. They are not personally liable.

   Example: A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

4. **Performance by a third person (তৃতীয় ব্যক্তি দ্বারা কার্য সম্পাদন):** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. (Section 41)

   Thus, where a promisee accepted lesser amount from a third party in full satisfaction of his claim, it was held that he cannot enforce the promisee against the promisor. Notice that under this Section performance of the promise by a stranger, once accepted by the promisee, discharges the promisor, although the latter has neither authorized nor ratified the act of the third party.

5. **Effect of release of one joint promisor (যৌথ প্রতিশ্রুতি দাতার প্রভাব):** Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors. (Section 44)

So, the above mentioned people or party can performed in a contract. In some cases person himself, third person, legal representatives, or agent can perform the contract.

?	**What do you understand by performance of contract?**	***[BBA (Prof.) 2013, 2016]***

1.51 Devolution of Joint Rights and Liabilities (যুগ্ম অধিকার ও দায়িত্ব হস্তান্তর)

Devolution means passing over from one person to another. In many cases, there may be more than one promisor and promisee. If there are more than one promisor, they are called 'joint promisors' and in case there are more than one promisee they are called 'joint promisees.'

Two or more persons may enter into a joint agreement with one or more persons.

Example: A and B jointly promise to pay Taka 500 to C and D. In such cases, the question arises, who is liable to perform the contract and who can demand performance?

Rule: The rules on the subject are stated below:

1. **Devolution of joint liabilities (যৌথ দায়বদ্ধতা স্থানান্তর):** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons during their joint lives, and after the death of any of them his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise. (Section 42)

2. **Any one of joint promisors may be compelled to perform Each promisor may compel contribution Sharing of loss by default in contribution:** When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

   Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

   If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. (Section 43)

   Explanation: Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

   Example: (a) A, B and C jointly promise to pay D 3,000 Taka. D may compel either A or B or C to pay him 3,000 Taka.

(b) A, B and C jointly promise to pay D the sum of 3,000 Taka. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 Taka from A's estate, and 1,250 Taka from B.

3. **Effect of release of one joint promisor (একজন যৌথ প্রমিসরকে মুক্তি দেওয়ার প্রভাব):** Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors. (Section 44)

4. **Devolution of joint rights (যৌথ অধিকারের বিবর্তন):** When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly. (Section 45)

   Example: A, in consideration of 5,000 Taka lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Thus the above rights and liabilities are born due to the devolution of an agreement. The right and liabilities are vested here as per the rule of contract act accordingly.

?	**Write notes on Devolution of Joint Rights and Liabilities.**

1.52 Reciprocal Promises
(পারস্পরিক অঙ্গীকার)

Promises which form the consideration for each other are called "reciprocal promises" or "mutual promises." It is common knowledge that "bilateral contracts," where both contracting parties have to perform their promises, involve "mutual promises" amongst the parties. In such contracts each party gives a promise, in return for a promise.

Example: A promises to sell certain goods to B and B, in return promises to pay the price thereof to A, and there is an obligation on each party to perform his own promise and to accept performance of other's promise.

Rules: Section 51-54 and 56-58 of the contract act, 1872 lay down the rules regarding the performance of reciprocal promises. They are stated below:

1. **Promisor not bound to perform, unless reciprocal promisee ready and willing to perform (পারস্পরিক প্রতিশ্রুতি প্রস্তুত এবং সম্পাদন করতে ইচ্ছুক না হলে প্রচারক সম্পাদন করতে বাধ্য নয়):** When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. (Section 51)

Example: A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

2. **Order of performance of reciprocal promises (পারস্পরিক প্রতিশ্রুতি সম্পাদনের আদেশ):** Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires. (Section 52)

Example: A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

3. **Liability of party preventing event on which the contract is to take effect (যে ইভেন্টটি চুক্তি কার্যকর হবে সেই দলের প্রতিরোধের দায়বদ্ধতা):** When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract. (Section 53)

Example: A and B contract that B shall execute certain work for A for a thousand Taka. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

4. **Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (পারস্পরিক প্রতিশ্রুতি সমন্বয়ে চুক্তিতে প্রথম যে প্রতিশ্রুতি করা উচিত তা হিসেবে প্রত্যাশিত প্রভাব):** When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract. (Section 54)

Example: A hires B's ship to take in and convey, from Chittagong to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

5. **Agreement to do impossible act (অসম্ভব কাজ করার চুক্তি):** An agreement to do an act impossible in itself is void. (Section 56)

6. **Reciprocal promise to do things legal, and also other things illegal (আইনসম্মত এবং অন্যান্য জিনিস অবৈধ করার বিষয়ে পারস্পরিক প্রতিশ্রুতি):** Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement. (Section 57)

Example: A and B agree that A shall sell B a house for 10,000 Taka but that, if B uses it as a gambling house, he shall pay A 50,000 Taka for it. The first set of reciprocal promises, namely, to sell the house and to pay 10,000 Taka for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

7. **Alternative promise, one branch being illegal (বিকল্প প্রতিশ্রুতি, একটি শাখা অবৈধ):** In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. (Section 58)

   Example: A and B agree that A shall pay B 1,000 Taka for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

A contract consists of reciprocal promises when one party makes a promise (to do or not to do something in the future) in consideration of a similar promise made by the other party.

?	**State the rules regarding Reciprocal Promises.**

1.53 Assignment of Contracts
(চুক্তি আরোপ)

Assignment means transfer. Assignment involves the transfer of an interest or benefit from one person to another. However the 'burden', or obligations, under a contract cannot be transferred. Assignment may occur (i) by act of parties or (ii) by operation of law.

?	**Define Assignment of Contracts.**

1.54 The Time And Place Of Performance
(কার্য সম্পাদনের সময় ও স্থান)

The time and place is crucial in business to perform the contract accordingly. The rules regarding the time and place of performance are given in Section 46 to 50 of the Contract Act are as follows:

1. **Performance of the promise within a reasonable time (একটি যুক্তিসঙ্গত সময়ের মধ্যে প্রতিশ্রুতি সম্পাদন):** Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. (Section 46)

   Explanation: The question "what is a reasonable time" is, in each particular case, a question of fact.

2. **Performance of promise where time is specified (সময় নির্দিষ্ট করা হয় যেখানে প্রতিশ্রুতি সম্পাদন):** When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed. (Section 47)

   Example: A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

3. **Performance of promise on an application by the promise (প্রতিশ্রুতি দ্বারা একটি আবেদনের প্রতিশ্রুতি সম্পাদন):** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. (Section 48)

   Explanation: The question "what is a proper time and place" is, in each particular case, a question of fact.

4. **Performance of promise where no place is specified and also no application is to be made by promise (প্রতিশ্রুতি সম্পাদন যেখানে কোনো স্থান নির্দিষ্ট করা হয় নি এবং প্রতিশ্রুতি দিয়ে কোনো আবেদন করা হবে না):** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place. (Section 49)

   Example: A undertakes to deliver a thousand mounds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

5. **Performance of promise in the manner and time or sanctioned by promise (প্রতিশ্রুতি দ্বারা অনুমোদিত পদ্ধতিতে এবং সময় প্রতিশ্রুতি সম্পাদন):** The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. (Section 50)

   Example: B awes A 2,000 Taka. A desires B to pay the amount to A's account with C, a banker. B, whc also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

Thus the time and place of performance of contract are matters to be determined by agreement between the parties to the contract. The condition related time and place might raise liability and certain duties of the parties.

?	**Discuss the Rules regarding the Time and Place of Performance given in the Contract Act, 1872.**

1.55 Rules Regarding Appropriation of Payments
(অর্থ প্রদান ও আত্মসাৎ সংক্রান্ত বিধি)

The Rules relating to the appropriation of payments made by a debtor, who owes a number of distinct debts to his creditor are contained in Sections 59 to 61 of the Contract Act, 1872. These rules are:

1. **Where the debtor intimates (Sec. 59):**
   (i) Appropriation of payment is a right primarily of the debtor and for his benefit. If the debtor expressly intimates at the time of actual payment that the payment must be applied towards the discharge of a particular debt, the creditor must do so.
   (ii) If there is no express intimation by the debtor, the Law will look to the circumstances attending on the payment for appropriation. There is an established maxim that when money is paid, it is to be applied according to the express will of the payer, not to the receiver.

   Example: X owes two distinct debts of Taka 350 and Taka. 396. He pays Taka 396. It will be presumed that it is the payment of the latter debt as it is revealed from the amount of the second debt.

2. **When the debtor does not intimate and the circumstances are not indicative (Sec. 60):**
   (i) When the debtor does not expressly intimate or where the circumstances attending on the payment do not indicate any intention, the creditor may apply his own discretion to any lawful debt actually due and payable to him from the debtor.
   (ii) The creditor may also, until he has declared appropriation to the debtor, alter the appropriation.
   (iii) He cannot, however, apply the payment to a disputed and unlawful debt, but he may apply it to a debt, which a barred by the law of limitation.

3. **Part-payment is applied for the interest first and for the principal afterwards:** Regarding part-payment, the general principle, subject to any contract to the contrary, is that the payment should first be applied to the interest and after the interest is fully paid off, to the principal.

4. **Appropriation in order of receipts and payments:** The Rule of Clayton's Law is applicable where the parties have a current account. In such case appropriation impliedly takes place in the order in which receipts and payments take place and are carried into the account. Thus, as per the Rule, unless there is contrary intention, the items on the credit of an account must be appropriated against the items on the debit in order of date.

5. **When the debtor does not intimate and creditor fails to appropriate (Sec. 61):** Where the debtor does not expressly intimate and where the creditor fails to make any appropriation, the payment shall be applied in discharge of the debt in chronological order, i.e., in order of time. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

Example: X owes Y three loans-(1) Taka 1,000 taken on 1st April, (2) Taka 700 taken on 1st May, and 1,200 taken on 1st July. If he pays Taka.2, 000, the payment shall be appropriated towards the 1st and 2nd loans in full and the rest Taka 300 towards the third one.

Above mentioned rules are duly acknowledged during different times of payment. The appropriation makes it suitability of the situation and enhances the fame of the business.

?	**Discuss the rules regarding Appropriation of Payments.**

1.56 Different Methods of Termination
(পরিসমাপ্তির বিভিন্ন পদ্ধতি)

Since a contract is created by means of an agreement, it may also be discharged by another agreement between the same parties. Sections 62 and 63 deal with this subject and provide for the following methods of discharging a contract by mutual agreement:

1. **Discharge by performance (কর্মক্ষমতা দ্বারা নির্গমন):** Discharge by performance takes place when the parties to a contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Performance may be actual performance or attempted performance.
2. **Discharge by Agreement or Consent (চুক্তি বা সম্মতিতে নির্গমন):** A Contract comes into existence by an agreement and it may be discharged also by an agreement. The following are modes of discharge of a contract by an agreement:

   If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. (Section 62)

   Example: A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

   A. By Waiver: Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract.

   Example: An actor promised to make a guest performance in the film made by B. Later B forbids A from making the guest appearance. B is discharged of his obligation.

   B. By Novation: Novation means forming a new contract in place of the existing contract by the same or different parties.

   "If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."(Section 62) Novation creates a new contract. It discharges and extinguishes the original contract. The new contract may be between the same parties, or between them and a stranger.

   Example: X borrows Taka 5,000 and writes a promissory note in favor of Y for 3 months. After 3 months, X goes to Y and expresses his inability to pay the amount. X writes a new promissory note for Taka 5,000, the old promissory note is discharged by the new one. This novation is between the old parties i.e. X and Y.

The following are the essential characteristics of novation:

1. Novation occurs with the consent of both the parties.
2. The new contract must be capable of enforcement at law. If it is not enforceable, the parties shall be bound by the old contract.
3. The agreement to substitute the new contract for the old must be made before the expiry of the time of the performance of the original contract and must not be made after the breach of the old contract.

Whenever novation takes place, the old contracts become completely extinguished and are not to be performed. No action may be taken on the old contract. But if the new contract is unenforceable, the old contract is revived.

C. **By Rescission:** Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur by mutual consent or where one party fails in the performance of his obligations, the other party may rescind the contract.

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal. (Section 66)

When all or some of the terms of the contract are cancelled, it is called the rescission of the contract. Rescission may take place by mutual consent of the parties. Similarly where one party has committed a breach of contract, the aggrieved party can rescind the contract. In case of a voidable contract, the party whose consent was not free can, if he so decides, rescind the contract.

Where one party fails to perform its obligations, the other party can treat the contract as rescinded without prejudice to its right of compensation. Rescission may be total or partial. Total rescission occurs when all the terms are rescinded. For example, X agrees to supply 100 tons of rice to Y. X and Y agree that no rice need be supplied. The contract is rescinded. But if before the date of delivery, they agree that only 40 tons of rice may be delivered, the contract is rescinded partially.

D. **By alteration:** Alteration of a contract may take place when one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract.

E. **By Remission:** Remission means acceptance of a lesser fulfillment of the promise made. Acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt. Remission means acceptance of a lesser performance that what was actually due under the contract. According to section 63, a party may dispense with or remit, wholly or in part, the performance of the promise made to him. He can also extend the time of such performance or accept, instead of it, any satisfaction which he deems fit. A promise to do so will be binding even though there is no consideration for it.

F. **By Merger:** Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. For eg. P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

3. **Discharge by impossibility of performance (কর্মক্ষমতা অসম্ভবতা দ্বারা নির্গমন):** If a contract contains an undertaking to perform an impossibility, it is void ab initio. As per Section 56, impossibility of performance may fall into either of the following categories –

(i) Impossibility existing at the time formation of the contract (চুক্তি গঠনের সময় অসম্ভবতা বিদ্যমান): This is known as pre-contractual impossibility. The fact of impossibility may be –

(a) Known to the parties (দলগুলোর পরিচিতি): Both the parties are aware or know that the contract is to perform an impossible act. For eg. A agrees with B to put life into dead wife of B, the agreement is void.

(b) Unknown to the parties (দলগুলোর অজানা): Both the parties are unaware of the impossibility. The contract could be on the ground of mutual mistake of fact. For eg.A contract to sell his house at Andaman to B. Both the parties are in Mumbai and are unknown to the fact that the house is actually washed away due to Tsunami.

(ii) Impossibility arising subsequent to the formation of the contract (চুক্তি গঠনের পরবর্তী সময়ে অসম্ভবতা দেখা দেয়): Where impossibility of performance of the contract is caused by circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation arising under the contract.

In certain circumstances, subsequent impossibility makes the contract void. Supervening impossibility is an excuse for the non-performance of a contract in such cases. These cases are as follows:

A. **Destruction of subject matter of the contract: Where the subject (চুক্তি সংক্রান্ত বিষয় ধ্বংস):** matter of the contract is destroyed before the contract is performed the contract is discharged.

B. **Death or personal incapacity of the parties (দলগুলোর মৃত্যু বা ব্যক্তিগত অক্ষমতা):** Where the performance of the contract depends on the personal skill or qualification of a party, the contract is discharged on the illness or incapacity or death of that party. The man's life is an implied condition of the contract.

C. **Change of law (আইন পরিবর্তন):** A subsequent change in law may render the contract illegal and in such cases, the contract is deemed discharged. The law may actually forbid the doing of some act undertaken in the contract, or it may take from the control of the promisor something in respect of which he has contracted to act or not to act in a certain way.

D. **Declaration of War (যুদ্ধের ঘোষণা):** Contracts entered into during war with an alien enemy are void abinitio. When peace returns, they remain still void and of no effect. But contracts entered into before the declaration of war, remain suspended during the continuance of war, if it is for a short period and may be revived and enforced at the end of the war. But if war continues for a sufficiently longer period of time and the party would be discharged from performance on the ground of impossibility.

E. **Non-existence or non-occurrence of particular state of things (অস্তিত্ব বা নির্দিষ্ট জিনিসের অস্তিত্ব):** If a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged, if the state of things changes or ceases to exist.

4. **Discharge by lapse of time (সময়ের ব্যবধানে নির্গমন):** The Limitation Act, 1963 lays down certain specified periods within which different contracts are to be performed and be enforceable. If a party to a contract does not perform, action can be taken only within the time specified by the Act. Failing which the contract is terminated by lapse of time.

Example: A sold a gold chain to B on credit without any period of credit, the payment must be made or the suit to recover it, must be instituted within three years from the date of delivery of the instrument.

5. **Discharge by Operation of Law (আইন পরিচালনার মাধ্যমে নির্গমন):** A contract may be discharged independently of the wished of the parties i.e. by operation of law. This includes discharge –

A. **By death:** In contract involving personal skill or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

B. **By insolvency:** When a person is declared insolvent, he is discharged from all liabilities incurred prior to such declaration.

C. **By unauthorized material alteration of the terms of a written agreement:** Any material alteration made by a party to the contract, without the prior permission of the other party, the innocent party is discharged.

D. **By rights and liabilities becoming vested in the same person:** When the rights and liabilities under a contract vests in the same person.

6. **By material alteration (উপাদান পরিবর্তন):** If the material of a contract is altered by one party without the consent of the other party, the contract is discharged.

7. **Discharge by Breach (ভঙ্গ) of Contract:** A breach of contract occurs when a party thereto without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. A breach to a contract occurs in two ways:

(a) **Actual Breach (প্রকৃত লঙ্ঘন):** When a party fails, or neglects or refuses or does not attempt to perform his obligation at the time fixed for performance, it results in actual breach of contract. For eg. A promises to deliver 100 packs of ice-cream to B on his wedding day. A does not deliver the packs on that day. A has committed actual breach of the contract.

(b) **Anticipatory Breach (প্রত্যাশিত লঙ্ঘন):** Anticipatory Breach is a breach before the time of the performance of the contract has arrived. This may take place either by the promisor doing an act which makes the performance of his promise impossible or by the promisor, in way showing his intention not to perform it.

Remedies for Breach of Contract: When a breach of contract occurs, the aggrieved party can get the following remedies:

1. **Rescission of the contract (চুক্তি বাতিল):** When a breach of contract occurs, the aggrieved party is freed from all his obligations under the contract.
2. **Suit for damages (ক্ষতির জন্য মামলা):** The aggrieved party can get compensation for any damage caused to him by breach of contract. He can file a suit for getting compensation.
3. **Suit upon Quantum Meruit (কোয়ান্টাম মেরিট উপর স্যুট):** When a contract has been partly performed, the aggrieved party can file a suit for the value of what he has done before the breach of contract.
4. **Specific performance of the contract (চুক্তির নির্দিষ্ট কর্মক্ষমতা):** In certain special cases, the court can direct a party to perform the contract according to the agreed terms.
5. **Injunction (অনুজ্ঞা):** Under certain circumstances, the court may prohibit a party doing something that is breaking the contract.

These are the various remedies for breach of contract. The contract act vested the provision in order to mitigate the loss incurred by the party due to breach of contract.

?	**In what circumstances does the discharge of contract take place?** **Or, Discuss the various methods / ways by which a contract may be terminated or comes to an end.** ***[BBA Professional 2016, 2005]***

1.57 The Doctrine of Frustration
(হতাশাজনক মতবাদ)

The doctrine of frustration of contract comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of the parties. Frustration takes place when: (1) an event occurs which the parties could not contemplate when they made out the contract, (2) the event is one for which neither party is responsible, i.e., Act of God, Vis Major etc. (3) the contract, if performed, would be something entirely different from the bargain made by the parties.

An agreement to do an act impossible in itself is void. (Section 56)

Section 56 of the Contract Act lays down positive rules and does not leave anything to be determined according to the intention of the parties. It is really an aspect of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of sec. 56.

?	**Discuss the Doctrine of Frustration.**	**[BBA (Prof.) 2017]**

1.58 Different Types of Damages
(বিভিন্ন ধরনের খেসারত)

When a contract is broken the injured party can claim damages from the other party. Damages might take place in different situation. Damages allowed by the courts may be of different types as follows.

1. **Ordinary Damages (সাধারণ খেসারত):** Damages which arise in the ordinary course of events from the breach of contract are called ordinary damages. These damages constitute the direct loss suffered by the aggrieved party. They are estimated on the basis of circumstances prevailing on the date of the breach of the contract. Subsequent circumstances tending to change the quantum of damages are ignored.

   Example: X agrees to sell to Y 100 quintals of wheat at Taka 335 per quintal, the price to be paid at the time of delivery. The price of wheat rises to Taka 350 per quintal and X refuses to sell the wheat. Y can claim damages of Taka 1,500 i.e. at the rate of Taka 15 per quintal. If on the appointed day, Y refuses to take delivery of the wheat and the price go down, e.g., at Taka 320 per quintal, then X can claim compensation from Y on the similar terms.

2. **Special Damages (বিশেষ খেসারত):** Special damages are those which result from a breach of contract under some special circumstances. If special loss is likely to be sustained as a result of the breach, this should be communicated to the other party; otherwise special damages will not be awarded.

   Thus, these damages do not directly arise due to a breach of contract, i.e., remote or indirect loss. Such damages can be claimed, if both the parties reasonably contemplated or expected that such damage will arise.

   Example: A taxi driver gave his taxi for repair to a mechanic informing him that unreasonable delays will result in loss of income of Taka 80 per day. The mechanic unreasonably delays the repair of the taxi. The taxi driver is entitled to recover loss of income at the rate of Taka 80 per day.

3. **Vindictive or Exemplary Damages or Punitive Damages (প্রতিহিংসাপরায়ণ বা শিক্ষণীয় খেসারত বা শাস্তিমূলক খেসারত):** These damages are the exceptions to the rule that damages are not to be in the nature of punishment, but only compensation for the loss sustained.

4. **Nominal Damages (নামমাত্র খেসারত):** These damages are quite small in amount, e.g., a Taka. They are never granted by way of compensation for the loss. In such cases, usually the actual loss is very negligible. They are awarded simply to recognize the right of the party to claim damages for the breach of the contract.
5. **Damages for loss of reputation (খ্যাতি হারানোর খেসারত):** Damages for loss of reputation are not generally recoverable.

These are the damages which might take place. Damages vary greatly in terms of amount of money, conditional, and reputation.

?	**Discuss the different types of damages.**

1.59 Rules Regarding The Amount of Damages
(খেসারতের পরিমাণ সংক্রান্ত বিধি)

The rules are a guide for the courts to measure the damages to the aggrieved party. Rules are designed to meet the several amount of damages. The following are the types of damages awarded by the court:

1. **Compensation (ক্ষতিপূরণ):** The courts award compensation and not penalty because the objective is that the aggrieved party should be compensated and not to prove a party guilty of punishing him for causing breach. The law does not consider breach of contract as a crime fit for punishment.
2. **Limited damages (সিমিত ক্ষতি):** The court awards compensation to the aggrieved party when the contract is not performed according to agreement. It does not pay damages for expectations of the aggrieved party or for incidental or remote causes that are not connected with the contract.
3. **Damages attributed directly to the contract (চুক্তি উপর সরাসরি আরোপিতক্ষয়ক্ষতি):** Damages are awarded by the court for losses occurring in due course of the contract. Damages may be general or special depending on the circumstances of the case.
4. **Stipulation for liquidated damages or penalty (পূর্বে নির্ধারিত বা শাস্তি জনিত খেসারত):** The parties to the contract can themselves stipulate the damages to be given to the aggrieved party either by way of liquidated damages or penalty.
5. **Damages under sale of goods (পণ্যবিক্রয় সংক্রান্ত ক্ষতি):** In sale of goods there are several problems of breach of contract. As damages, the aggrieved party will get the difference in value between the contract price and the market price on the date of the breach of the contract.
6. **Expenses of the suit (মামলার ব্যয় নির্বাহ):** The expenses of conducting a suit in the court can be recovered from the party that has created a breach to the contract. However, it is the courts discretion to award the cost of the suit to the guilty party.

Damages can be recovered in different ways. It might compensation; file a suit, penalty for breaching the agreement.

?	**Discuss the rules regarding the amount of Damages.**

1.60 Rules Regarding The Doctrine of Quantum Meruit (কোয়ান্টাম মেরিটের মতবাদ সম্পর্কিত নিয়ম)

The term Quantum Meruit means as much as merited or "as much as earned". In other words, it means payment in proportion to the amount of work done. Generally, one cannot claim performance from another unless one has performed his obligation in full but in certain cases; a person who has performed some work under a contract can claim remuneration for the work which he has already done. The right to claim on quantum meruit does not arise out of a contract as the right to damages does. It is a claim on the quasi contractual obligations which is implied by the circumstances. The claim for quantum meruit arises only when the original contract is discharged.

Rules regarding the doctrine of Quantum Meruit (কোয়ান্টাম মেরিটের মতবাদ সম্পর্কিত বিধি-বিধান): The action of Quantum Meruit is allowed in The Court of Bangladesh under Section 70 of the Contract Act, 1872. The claim of quantum merit arises in the following cases:

1. **Breach of Contract (চুক্তি লঙ্ঘন):** Where there is a breach of contract, the injured party is entitled to claim reasonable compensation for what he has done under the contract.
2. **When a contract is discovered to be void (চুক্তি লঙ্ঘন যখন একটি চুক্তি বাতিল বলে প্রমাণিত হয়):** When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. (Section 65).
3. **Where something has been done non-gratuitously (কোথায় কিছু কাজ করা হয়েছে অ-যৌক্তিক):** Where work is done or goods delivered by a person without an intention to do so gratuitously, and the benefit of the same is enjoyed by the other party, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or so delivered. For example, X forgets certain goods at Y's house. He had no intention to leave them with him gratuitously. Y uses those goods for his personal benefit. X can compel Y to pay for those goods.
4. **Where the contract is divisible (যেখানে চুক্তিটি বিভাজ্য):** Where a contract is divisible, and a party to the contract has done a part of his obligation, he may sue on quantum merit. This rule applies even though the party claiming on quantum merit is himself guilty of breach of contract.

Doctrine of Quantum Meruit is, however, subject to the following two limitations (কোয়ান্টাম মেরিটের মতবাদ, নিম্নলিখিত দুটি সীমাবদ্ধতার সাপেক্ষে):

1. In a contract which is not divisible into parts and a lump sum of money is promised to be paid for the complete work, part performance will not entitle the party to claim any payment.
2. A person, who himself is guilty of breach of contract, cannot be allowed to claim any payment under the doctrine of quantum merit.

The Contract Act, 1872, the claim of quantum meruit arise under section 65 in case of void agreement or contract which becomes void and under section 70 in case of gratuitous act. However in whole it means one should get what he deserves to get on the basis of task performed.

?	**Discuss the Rules regarding the doctrine of Quantum Meruit.**

1.61 Definition and Characteristics of Indemnity Contracts
(ক্ষতিপূরণ চুক্তি সংজ্ঞা এবং বৈশিষ্ট্য)

Indemnity is defined as "a duty to make good any loss, damage, or liability incurred by another. Indemnity has the general meaning of "hold harmless;" that is, one party holds the other harmless for some loss or damage. The person who promises to save the other from loss is called indemnifier. The person whose loss is to be made good is called indemnified or indemnity holder.

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity". (Section 124)

Example: A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 Taka. This is a contract of indemnity.

Characteristics: Characteristics or requisites of a contract of indemnity are as follows:

1. A contract of guarantee must satisfy all the essential elements of a contract.
2. The contract may be express or implied. An express contract is by word or by writing. An implied contract of indemnity comes from the circumstances of the case or the relationship between the parties.

Thus the person who promises to compensate the loss is called the indemnifier and the person who is so promised is called the indemnity holder.

?	**Discuss the characteristics of indemnity contracts.** **[NU 2019]**

1.62 Contracts of Guarantee
(জামানতযুক্ত চুক্তি)

A contract of guarantee is a contract to perform a promise or discharge the liability of a third person in case of his default. There are three parties to a contract of Guarantee: (i) Principle debtor, (ii) Creditor, and (iii) Surety. Principle debtor is the person in respect of whose default the guarantee is given. The person to whom the guarantee is given, is called the creditor. And the person who gives the guarantee is called the surety.

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety": the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written. (Section 126)

Example: A advances a loan of Taka 5000 to B and C promises to A that if B doesn't repay the loan, C will do so. This is a contract of guarantee.

Essential Elements of a Valid Guarantee (বৈধ গ্যারান্টির প্রয়োজনীয় উপাদানসমূহ):

1. A contract of guarantee must satisfy all the essential elements of a contract.
2. It is tripartite agreement. One is principal debtor and creditor. Second is creditor & surety and the third between principal debtor and surety.
3. In guarantee, the primary liability is of principal debtor. The liability of surety arises only in case of default by principal debtor.
4. A contract of guarantee is invalid where guarantee has been obtained by means of misrepresentation made by creditor.

Types of Guarantee (গ্যারান্টির প্রকারভেদ):

1. **Ordinary Guarantee (সাধারণ গ্যারান্টি):** When a guarantee is given for a single specific debt or transaction, it is called ordinary transaction.
2. **Continuing Guarantee (অব্যাহত গ্যারান্টি):** When a guarantee extends to a series of distinct and separable transactions, it is continuing guarantee.

Finally we can say that a contract to perform the obligation or to discharge the liability of a third party in case of its default is called contract of guarantee.

?	**Define Contracts of Guarantee and the essential elements of Guarantee. [NU 2019]**

1.63 Difference Between Indemnity and Guarantee (ক্ষতিপূরণ এবং জামিনের মধ্যে পার্থক্য)

At first instance, these two will appear same, but there are some differences between them. Indemnity is when one party promises to compensate the loss occurred to the other party, due to the act of the promisor or any other party. The guarantee is when a person assures the other party that he will fulfill the obligation in case of default by the third party. There are some differences between Indemnity and guarantee. These are as follows:

Differentiating points (পার্থক্যের বিষয়)	Indemnity (ক্ষতিনিষ্কৃতি)	Guarantee (জামিন)
Definition (সংজ্ঞা)	A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the promisor himself, or by any other person.	A contract of guarantee is a contract to perform the promise of a third person in case of his default.
Party(পক্ষ)	In indemnity, there are two parties: a) the indemnifier; and b) the indemnity-holder.	In guarantee, there are three parties: a) the creditor; b) the principal debtor; and c) the surety.

Number of contract (চুক্তির সংখ্যা)	In indemnity, it is necessary to have only one contract between the parties.	In guarantee, it is necessary to have three contracts between the parties.
Nature of liability (দায় এর প্রকৃতি)	In indemnity, the liability of the indemnifier is primary.	In guarantee, the liability of the surety is secondary.

After having a deep discussion on the two, now we can say that these two types of contract are different in many respects. In indemnity, the promisor cannot sue the third party, but in the case of guarantee, the promisor can do so because after discharging the creditor's debts he gets the position of the creditor.

?	Discuss the Rules regarding contingent contracts. ***[BBA Professional 2010, 2012, 2017]***

1.64 Definition of Continuing Guarantee
(অব্যাহত গ্যারান্টির সংজ্ঞা)

Continuing guaranty refers to a guaranty in which the guarantor will not be liable unless a specified event occurs. This guaranty relates to a future liability of the guarantor under successive transactions, after it has been satisfied is called a continuing guaranty.

A guarantee which extends to a series of transactions is called a "continuing guarantee". (Section 129)

Example: (a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 Taka, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

A continuing guarantee is a guarantee where the guarantor assumes liability for any past, present and future obligations owed by a debtor to a lender or creditor. Even where the amount owing has been completely paid, the guarantor can still be liable under that line of credit if there is a subsequent indebtedness.

?	**Definition of Continuing Guarantee.**

1.65 Definition and Features of Bailment
(গচ্ছিত প্রদান সংজ্ঞা এবং বৈশিষ্ট্য)

Bailment Originated from a French word Bailer which means to deliver. Bailment is a kind of activity in which the property of one person temporarily goes into the possession of another. The ownership of the property remains with the giver, while only the possession goes to another.

A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "Bailee". (Section 148)

Explanation – If a person already in possession of the goods of another contracts to hold them as a Bailee, he thereby becomes the Bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Example: P delivers a pen to Q for repair.

Characteristics/Feature/Requisites of Bailment: Bailment has the following features:

1. **Delivery(অর্পণ):**It is delivery of goods by one person to another.
2. **Purpose(উদ্দেশ্যে):** The goods are delivered for some purpose.
3. **Return(ফেরত):** Here, the goods are to be returned to the bailor.
4. **Contract(চুক্তি):** Bailment arises from express or implied contract.
5. **Ownership(মালিকানা):**In bailment, the bailor continues to be the owner of goods. Therefore, bailment does not cause any change of ownership.
6. **Movable goods(অস্থাবর সম্পত্তি):**Bailment is concerned with only movable goods. Money is not included in the category.

So, these are the various features / requisites / characteristics of Bailment. On analyzing the definition, we find the characteristics of bailment.

?	**What are the Requisites / Characteristics / Features of Bailment?** [BBA Professional 2010, 2011, 2015, 2017]

1.66 Duties and Responsibilities of a Bailee and Bailor
(গচ্ছিতদাতা এবং গ্রহিতার দায়িত্ব ও কর্তব্য)

Bailment describes a legal relationship in common law where physical possession of personal property, or a chattel, is transferred from one person (the "bailor") to another person (the "bailee") who subsequently has possession of the property. In Bailment, there are some duties and responsibilities of Bailee and Bailor. These are shown below:

Duties and responsibilities of a Bailee:

1. **Duty of reasonable care (যুক্তিসংগত ক্ষেত্রে দায়িত্ব):** In all cases of bailment the Bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. (Section 151)

   The Bailee is bound by the contract of bailment to return the goods when the purpose of bailment is fulfilled .He has to take care of the goods while they are in his possession. He is responsible for any loss or damage caused to the goods by virtue of his negligence.

   The Bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151. (Section 152)

2. **Bailee's liability for negligence of servants (কর্মীদের অবহেলার জন্য জামিনদাতার দায়):** A Bailee is liable for the damages of the goods bailed caused by negligence of the servants about the use or custody of the things bailed, when acting in course of their employment. But the Bailee is not liable for damages caused by the acts or default of third person which cannot be prevented by ordinary diligence.

3. **Unauthorized use of goods (পণ্য অননুমোদিত ব্যবহার):** If the Bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. (Section 154)

   Example: A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

4. **Mixture of Bailor's goods with the Bailee's (জামিনদাতার পণ্যের সহিত জামিন পণ্যের মিশ্রণ):** If the Bailee, without the consent of the bailor, mixes the goods of the bailor with his goods then the Bailee is bound to bear the expense of separation and any damage arising from the mixture. The following rules apply:

   If the Bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the Bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced. (Section 155)

   If the Bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the Bailee is bound to bear the expense of separation or division, and any damage arising from the mixture. (Section 156)

   Example: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

If the Bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the Bailee for the loss of the goods. (Section 157)

Example: A bails a barrel of Cape flour worth Taka 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Taka 25 a barrel. B must compensate A for the loss of his flour.

5. **Duty of returning goods (পণ্য ফেরত এর ক্ষেত্রে দায়িত্ব):** It is the duty of the Bailee to return, or deliver according to the bailor's direction, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has accomplished. (Section 160)

   If, by the default of the Bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. (Section 161)

6. **Accretion to the goods bailed (পণ্য জামিনের ক্ষেত্রে উপদেশ):** In the absence of any contract to the contrary, the Bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. (Section 163)

   Example: A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

7. **Responsibility of Innkeeper or Hotel owners (হোটেল মালিকের দায়-দায়িত্ব):** Except certain special cases, the Inn owner or Hotel owner is bound to bear any loss or damages to their customers' goods. As per section 151 and 152.

Duties and responsibilities of a Bailor:

1. **Disclose faults in goods bailed (পণ্য জামিনের জালিয়াতি প্রকাশ):** The bailor is bound to disclose to the Bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the Bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the Bailee directly from such faults. If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. (Section 150)

   Example: A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

2. **Payment of expenses in gratuitous Bailments (অকার্যকর ব্যালমেন্ট খরচ পরিশোধ):** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the Bailee for the bailor, and the Bailee is to receive no remuneration, the bailor shall repay to the Bailee the necessary expenses incurred by him for the purpose of the bailment. (Section 158)

3. **Responsibility for breach of Warranty of Title (শিরোনাম লঙ্ঘনের দায়-দায়িত্ব):** The bailor is responsible to the Bailee for any loss which the Bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.(Section 164)

From the above discussion, it is clear that in such circumstances the Bailor and Bailee have the duties and opportunities to perform under the act.

?	**What are the duties and responsibilities of a Bailee and Bailor?** [BBA Professional 2006]

1.67 Difference between Bailment and Pledge or Pawn (গচ্ছিত প্রদান এবং বন্ধক-এর মধ্যে পার্থক্য)

Bailment' refers to the transfer of goods from one party to another party for some specific purpose. 'Pledge' on the other hand is a type of bailment in which goods are transferred from one party to another party as security for payment of a debt owed by him. There are some differences between Bailment and Pledge. These are as follows:

Differentiating Points (পার্থক্যর বিষয়)	Bailment (গচ্ছিত প্রদান)	Pledge or Pawn (বন্ধক)
Definition	A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned to the person delivering them when the purpose is accomplished.	The bailment of goods as security for payment of a debt or performance of a promise is called pledge or pawn.
Objectives	In bailment, there may have various types of objectives, i.e. repair, safe-custody etc.	The objective of a pledge is to provide security for a debt or the performance of a promise
Nature	Bailment may not be a pledge.	Pledge is a particular kind of bailment.

The pledge has a limited scope as compared to bailment; many businessmen take a loan from the financial institution by pledging their stock as security. In short, we can say that every pledge is a bailment, but every bailment is not a pledge. So, both of them are very important at their places.

?	**State the Difference between Bailment and Pledge or Pawn.**

1.68 Definition of Quasi-Contract and Types
(উপ-চুক্তির সংজ্ঞা এবং প্রকারভেদ)

Generally a contract comes into existence as a result of offer made by one party and its acceptance by the other party, with free will of both the parties. However under certain conditions even though no will is expressed by both the parties for creating contractual relations, the law creates and enforces legal rights and obligations. Such contracts are known as Quasi Contracts. The principle behind Quasi Contracts is that a person shall not be allowed to enrich himself at the expense of another.

There are certain dealings which are not contracts strictly though the parties act as if there is a contract there. These contracts are called quasi contract.

Section 68 to 72 of the Contract Act deals with 5 different kinds of Quasi Contracts explained below:

1. **Necessaries for incapable persons (অক্ষম ব্যক্তিদের জন্য প্রয়োজনীয়তা):** If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. (Section 68)

   Example: A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. **Payment by the interested persons (আগ্রহী ব্যক্তিদের দ্বারা পরিশোধ):** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. (Section 69)

   Essentials:
   - There must be a person who is bound to make a payment by law. The person paying must himself not be bound to pay.
   - There must be another person interested, not bound by law, in such payment being made and interest should exist at the time of payment.
   - The payment must be made bonafide for the protection of one's own interest.

   Example: B holds land in Bangladesh, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his lands is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

3. **Benefit of non-gratuitous act (ভিত্তিহীন আইনের সুবিধা):** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. (Section 70)

Essentials:

- Person lawfully does anything for another person;
- Delivers anything to him non-gratuitously;
- Latter is bound to make compensation or restore the thing so done or delivered;
- The thing must be done lawfully;
- The person for whom the act is done must enjoy the benefit of it.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

4. **Finder of Goods (পণ্য সন্ধ্যানক):** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a Bailee. (Section 71) The finder's position, therefore, has been considered along with bailment"
5. **Delivered by mistake or Coercion (ভুলভাবে পণ্য বিতরণ করা):** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. (Section 72)

   Example: A and B jointly owe 100 Taka to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 Taka over again to C. C is bound to repay the amount to B.

The basic concept of a quasi-contract is that a contractual agreement should have been formed in situations where such an agreement was not realized. The quasi-contract is thus used when a court system feels as though it is appropriate to create an obligation to avoid an injustice and to promote equality between two parties.

?	**What is a Quasi-Contract? Give some examples of Quasi-Contract.** *[BBA Professional 2012]*

1.69 Definition of Agent
(এজেন্ট-এর সংজ্ঞা)

Agent is a person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decisions.

The concept originated in Roman law as represented by the ***maxim qui facit per alium, facit per se*** (he who acts through another, acts as if directly himself).

The person who is being represented by the agent is referred to as the **principal**.

According to Contract Act 1872 Section 182,

An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Statutes have used the word and then given a very unique meaning. For example, a person may be entitled to be represented or assisted in Court or before a tribunal by an agent.

?	**Define of Agent.**

1.70 Types of Agents
(এজেন্ট-এর প্রকারভেদ)

An Agent is defined as a relationship between two parties called PRINCIPAL and AGENT, whereby, the function of the agent is to create a contract/s between the principal and third parties(or to act as the representative of the principal in other ways. There are five types of agents:-

1. **General Agent (সাধারণ প্রতিনিধি):** The general agent possesses the authority to carry out a broad range of transactions in the name and on behalf of the principal. The general agent may be the manager of a business or may have a more limited but nevertheless ongoing role—for example, as a purchasing agent or as a life insurance agent authorized to sign up customers for the home office.
2. **Special Agent (বিশেষ প্রতিনিধি):** The special agent is one who has authority to act only in a specifically designated instance or in a specifically designated set of transactions. For example, a real estate broker is usually a special agent hired to find a buyer for the principal's land.
3. **Agency Coupled with an Interest (প্রতিনিধি একটি আগ্রহের সাথে মিলিত হয়েছে):** An agent whose reimbursement depends on his continuing to have the authority to act as an agent is said to have an agency coupled with an interest if he has a property interest in the business. A literary or author's agent, for example, customarily agrees to sell a literary work to a publisher in return for a percentage of all monies the author earns from the sale of the work.
4. **Subagent (উপ-প্রতিনিধি):** To carry out her duties, an agent will often need to appoint her own agents. These appointments may or may not be authorized by the principal. An insurance company, for example, might name a general agent to open offices in cities throughout a certain state.
5. **Servant (শ্রমিক):** The final category of agent is the servant. Until the early nineteenth century, any employee whose work duties were subject to an employer's control was called a servant; we would not use that term so broadly in modern English.

?	**Discuss the Types of Agents.**

1.71 Creation of Agency
(এজেন্সি সৃষ্টি)

The agency can be created by the following ways:

1. **By express appointment by the principal:** Generally an authority is conferred by the Principal to the Agent. If the agent exceeds this authority, then the principal will not be bound and the agent will be personally liable to the third party for breach of warranty of authority.
2. **By implied appointment by the principal:** The law can infer the creation of an agency by implication when a person by his words or conduct acts as if he has such authority and the principal acknowledges that he was entitled to act accordingly.

?	**Describe the Creation of Agency.**

3.72 Ratification by the Principal
([illegible])

Agency by ratification can arise in any one of the following situations:

- An agent who was duly appointed has exceeded his authority, or
- A person who has no authority to act acted as if he has the authority.
- When one of the above said situations arise, the principal can either reject the contract or accept the contract so made.
- When the principal accepts and confirms such a contract, the acceptance is called ratification. Ratification may be expressed or implied.
- The effect of ratification is to render the contract as binding on the principal as if the agent had been properly authorized before hand.

Q. What are the Ratification by the Principal

3.73 Duties of an Agent to his Principal
([illegible])

Duty of an agent is list down from s. 104 to s. 178 of the Contract Act 1872:

- To obey principal's instruction.
- To exercise care and diligence in carrying out his work and use such skill as he possesses.
- To render proper accounts when required.
- To pay to his principal all sum received on hi behalf.
- To communicate with the principal.
- Not to let his own interest conflict wit his duty.
- Not to make an secret profit out of the performance of his duty.
- Not to disclose confidential information or documents.
- Not to delegate his authority.

Q. What are the Duties of an Agent to his Principal

3.74 Duties of an Agent to his Principal
([illegible])

The duties of a principal to his agent are provided in sections 175 to 178. The main duties are:

- To pay the agent the commission or other agreed remuneration unless the agency relationship is gratuitous.
- Not to wilfully prevent or hinder the agent from earning his commission.
- To indemnify and reimburse the agent for acts done in the exercise of his duties.

Q. Describe the Duties of an Agent to his Principal

1.75 Termination of Agency
(এজেন্সি সমাপ্তি)

Sections 154 to 163 of the Contracts Acts states the various ways an agent's authority may be terminated:

1. By act of the party:
   (a) By mutual consent (both party agree)
   (b) By revocation by Principal
   (c) By renunciation by Agent

   All the above can be done by giving notice (reasonable notice in the case of revocation and renunciation)

   (d) By the performance of the contract of agency. This happens when agency is created for single specific transaction. (sc 154 CA)
   (e) By the expiration of the period fixed/implied in the contract
2. By operation of law:
   - By the death of either principal or agent. Because relationship between principal and agent is confidential and personal. (Sec 161). Section 162 CA states when the principal dies, the agent must take all reasonable steps to protect and preserve the interests entrusted to him.
   - By the subsequent insanity of either principal or agent. A person of unsound mind cannot enter into contract to appoint an agent or to act as an agent.
   - By the bankruptcy/insolvency of principal.
   - By the happening of an event which renders the agency unlawful. This is an application of the doctrine of frustration to contracts. For agency contracts, there are examples of termination when the principal becomes an enemy alien because of war or where the subject matter is lost/destroyed.

When an agency is terminated, the A agent cannot bind the principal in transactions that he may have entered into with third parties. He will be personally liable to third parties for the contract.

?	**Describe the Termination of Agency.**

EXERCISE

1. Define Contract or Agreement.
2. What are the various types of contract or agreement?
3. Discuss the rules regarding Acceptance.
4. Differentiate between the rights of a stranger to a contract and of a Stranger to the Consideration.
5. Discuss the exceptions to the rule that a stranger to the contract cannot sue.
6 Define Void and Voidable agreements.
7. What is meant by Capacity to Contract?
8. Define Sound Mind According to the Contract Law.
9. Discuss different types of Disqualified Persons.
10. What are the Consequences of Coercion?
11. Define Fraud.
12. Is Silence amount to Fraud?
13. Define Unlawful Consideration.
14. Discuss the Rules regarding contingent contracts.
15. By whom is a contract to be performed?
16. Discuss the rules regarding Appropriation of Payments.
17. Discuss the Rules regarding the doctrine of Quantum Meruit.
18. State the Difference between Bailment and Pledge or Pawn.

National University Questions and Solutions

1. Define Contract or Agreement. ***[BBA Professional 12,11,07,06]***
2. "All agreements are not contract but all contracts are agreement"- Explain. ***[BBA (Professional) 13,12,11,10,09,08,07,06,05,04]***
3. Define offer (Proposal) and acceptance. ***[BBA (Professional) 11, 09, 07, 06, 05]***
4. Discuss the rules regarding offer. ***[BBA (Professional) 06]***
5. How an offer and acceptance is communicated? ***[BBA (Professional) 2013,12]***
6. How and when an offer can be revoked? ***[BBA (Professional) 2011,09,07,06]***
7. What do you mean by Consideration? ***[BBA (Professional) 2009, 06]***

8. Discuss different types of consideration. *[BBA (Professional) 2009,06]*
9. Discuss the essential elements or factors of consideration. *[BBA (Prof.)2007,05]*
10. No consideration no contract"- Explain with exception. *[BBA (Prof.) 2013,10,08,07,04]*
11. Distinguish between void agreements and voidable agreements. *[BBA (Prof) 13,11,09,06,05,04]*
12. Discuss the rules regarding the minor's agreement. *[BBA (Professional) 2008,05]*
13. State when a consent is not said to be free. *[BBA (Professional) 2013, 12, 06]*
14. Distinguish between "Coercion" and "Undue influence". *[BBA (Prof.20 13,11,09,05]*
15. Distinguish between Misrepresentation and Fraud. *[BBA (Prof. 2013,10,07]*
16. What are the agreements against Public Policy? *[BBA (Prof.) 2006]*
17. What do you mean by Contingent Contract? *[BBA(Professional) 2011, 06]*
18. Discuss the various methods / ways by which a contract may be terminated or comes to an end. *[BBA Professional 2005]*
19. Discuss the Rules regarding contingent contracts. *[BBA Professional 2010,07]*
20. What are the Requisites / Characteristics / Features of Bailment? *[BBA Prof-11,10,08,06]*
21. What are the duties and responsibilities of a Bailee and Bailor? *[BBA Prof. 2006]*
22. What is a Quasi-Contract? Give some examples of Quasi-Contract. *[BBA Prof.2012]*

23. "Insufficiency of consideration is immaterial; but an agreement without consideration is void"- Explain. **[BBA Professional 2013,09,06]**

ANSWER: An agreement is not void merely because of the consideration is inadequate. if the consent of the party is given freely. The reason behind this rule is that it is impossible for the court to decide what adequate consideration is. The parties to the contract must decide the quantum of consideration and, if consent was freely given the court will enforce the agreement.

If the consideration is inadequate, the court may hold that consent of the promisor was not freely given. Thus, the agreement may become void. Because, consideration means a reasonable equivalent or benefit passed on by the Promisor to the Promisee.

So, it has been correctly said tha "Insufficiency of consideration is immaterial; but an agreement without consideration is void"

24. What is meant by breach of contract? **[BBA Professional 2009,07]**

ANSWER: Breach of contract means the illegal refusal, negligence, or failure to perform the obligations of a contract by one party. Breach of contract may arise in two ways:

1. **Actual breach of contract:** It occurs when one party either fails or refuses to perform the obligations of a contract at the time when the performance is due.
2. **Anticipatory breach of contract:** It occurs when one party either fails or refuses to perform the obligations of a contract before the due time.

25. Discuss the remedies for breach of contract. ***[BBA Professional 2009,07]***

ANSWER: When a breach of contract occurs, the aggrieved party can get the following remedies:

1. **Rescission of the contract:** When a breach of contract occurs, the aggrieved party is freed from all his obligations under the contract.
2. **Suit for damages:** The aggrieved party can get compensation for any damage caused to him by breach of contract. He can file a suit for getting compensation.
3. **Suit upon Quantum Meruit:** When a contract has been partly performed, the aggrieved party can file a suit for the value of what he has done before the breach of contract.
4. **Specific performance of the contract:** In certain special cases, the court can direct a party to perform the contract according to the agreed terms.
5. **Injunction:** Under certain circumstances, the court may prohibit a party doing something that is breaking the contract.

So, these are the various remedies for breach of contract.

CHAPTER-02

The Negotiable Instruments Act, 1881

Syllabus: The Negotiable Instruments Act, 1881: Definition- Acceptance and Negotiation- Rights and Liabilities of Parties- Dishonor of Negotiable Instruments.

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2.1 Introduction
(ভূমিকা)

The law relating to negotiable instruments in Bangladesh is contained in The Negotiable Instrument Act, 1881. This law was framed in British India and later adapted in Pakistan in the wake of partition of the sub-continent. Following the liberation of Bangladesh all the laws then in force including **"The Negotiable Instrument Act, 1881"** were adapted in Bangladesh through an omnibus Presidential Order which, in the main, sought to replace the word Pakistan by Bangladesh in 1971 just as the former did by replacing the word by India in 1947. Although the good number of amendments have been made in the Act it continues to play an important part to dictate commercial transaction in Bangladesh especially the ones that involve a negotiable or even quasi-negotiable instrument. The provisions of the Act have been subject to innumerable scrutiny and interpretations at various forums and especially in the law of courts in the sub-continents for nearly 125 Years.

In Bangladesh particularly, the legal decisions in respect of negotiable instruments is few and far between. It means that due to delay in the dispensation of justice and the hassles and the costs of litigation, the clients prefer to settle the disputes outside the court amicably.

2.2 Negotiable Instruments
(হস্তান্তরযোগ্য দলিল)

The word negotiable means 'transferable by delivery', and word instrument means 'a written document by which a right is created in favor of some person.

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. (Section 14)

Thus, the term "negotiable instrument" means "a written document transferable by delivery".

A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer. [Section 13(1)]

In the words of **Justice, Willis**, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bona-fide and for value notwithstanding any defects of the title in the person from whom he took it".

Another useful definition is given by **Thomas** who states that- "An instrument is negotiable when it is, a legally recognized custom of trade or by law, transferable by delivery or by endorsement and delivery, without notice to the party liable in such a way

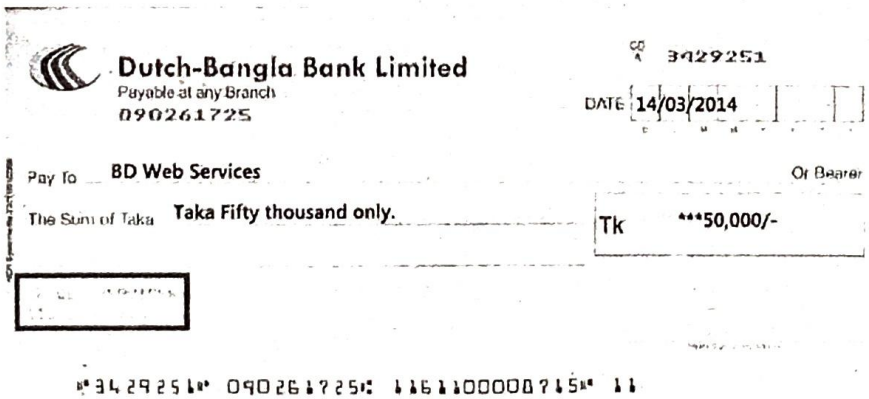
(a) The holder of it for the time being may sue upon it in his own name, and

(b) The property in it passes to a bona fide transferee for value free from any defect in the title of the person from whom he obtained it."

Thus, the term, negotiable instrument means a written document which creates a right in favor of some person and which is freely transferable. Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:

1. The instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and
2. The person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name.

A sample of negotiable instruments is shown below:


Dutch-Bangla Bank Limited
Payable at any Branch
090261725

3429251

DATE 14/03/2014

Pay To BD Web Services Or Bearer

The Sum of Taka Taka Fifty thousand only. Tk ***50,000/-

⑈3429251⑈ 090261725⑆ 116110000071 5⑈ 11

?	**What do you mean by "Negotiable instrument"?** *[BBA (Professional) 2016, 13, 12, 11, 09, 08, 05, 2017, 2019]*

2.3 Essential Features Of Negotiable Instruments
(হস্তান্তরযোগ্য দলিল এর অপরিহার্য বৈশিষ্ট্য)

Documents used in commercial transactions and monetary dealings, are called Negotiable Instruments. There are some characteristics of negotiable instrument. These are as follows:

1. **Writing and Signature(লিখিত ও স্বাক্ষর):** Negotiable instrument must be written and signed by the concerned parties.
2. **Money(অর্থ):** The liabilities of the parties of negotiable instruments are determined in terms of money.
3. **Negotiability (বিনিময়তা):** Negotiable instruments can be transferred from one person to another person by a simple process.
4. **Title (খেতাব):**The transferee of a negotiable instrument is called "the holder in due course", when he fulfils certain conditions.
5. **Notice (বিজ্ঞপ্তি):** It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.
6. **Presumptions (অনুমান):** Certain presumptions apply to all negotiable instruments Example: it is presumed that there is consideration here.
7. **Special Procedure for suits (মামলার বিশেষ পদ্ধতি):** A special procedure is provided for suits on promissory notes and bills of exchange. A decree can be obtained much more quickly than it can be in ordinary suits.
8. **Popularity (জনপ্রিয়তা):** Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.
9. **Evidence (প্রমান):** A document which fails to qualify as a negotiable instrument may yet be used as an evidence.

So, these are the various features of negotiable instruments which really helps to identify the negotiable instrument clearly. To conduct the negotiable instrument between/among the parties it requires completing the essential elements accordingly.

?	**Discuss the essential elements/features/characteristics of negotiable instrument.** *[BBA (Professional) 2016, 13, 12, 11, 09, 08, 07, 05, 04]*

2.4 Types of Negotiable Instruments
(আলোচনা সাপেক্ষে সরঞ্জামের প্রকারভেদ)

Negotiable instruments are freely transferable commercial documents and each type of negotiable instrument has unique functions and features. **Most Common Types of Negotiable Instruments are:**

- Promissory notes.
- Bill of exchange.
- Check.

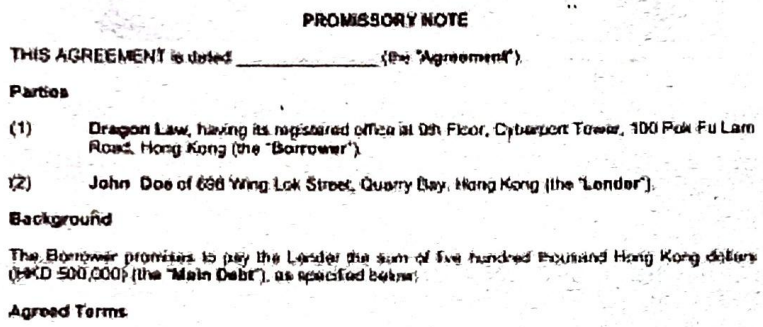
- Government promissory notes.
- Delivery orders.
- Customs Receipts.

Most negotiable instruments fall under the following two categories; the Negotiable instrument by statute and Negotiable instruments by custom or usages.

Negotiable instrument acts state three instruments. check, bill of exchange and promissory notes are negotiable instruments. They are therefore called negotiable instruments by statute.

Negotiable instruments by Statute are:

1. **Promissory Notes as Negotiable Instrument (আলোচনা সাপেক্ষে যন্ত্রপাতি হিসেবে নোট):** The promissory note is a signed document of written promise to pay a stated sum to a specified person or the bearer at a specified date or on demand.



PROMISSORY NOTE

THIS AGREEMENT is dated _____ (the "Agreement")

Parties

(1) Dragon Law, having its registered office at 9th Floor, Cyberport Tower, 100 Pok Fu Lam Road, Hong Kong (the "Borrower").

(2) John Doe of 698 Wing Lok Street, Quarry Bay, Hong Kong (the "Lender").

Background

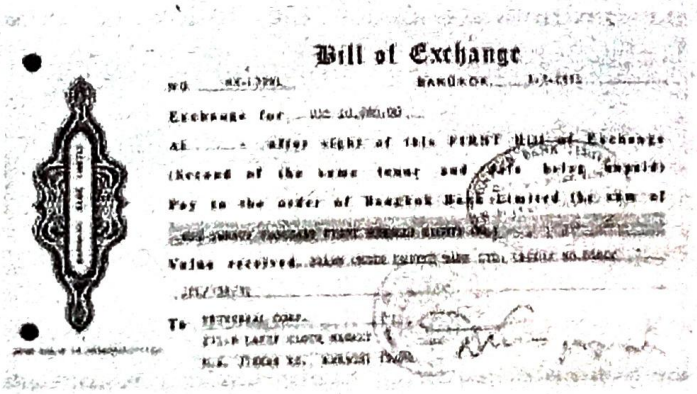
The Borrower promises to pay the Lender the sum of five hundred thousand Hong Kong dollars (HKD 500,000) (the "Main Debt"), as specified below.

Agreed Terms

The promissory note is an instrument in writing containing an unconditional rule signed by one party to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.

Thus a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. The debtor is the maker of the instrument.

2. **Bill of Exchange as Negotiable Instrument (আলোচনা সাপেক্ষে যন্ত্রপাতি হিসেবে বিনিময় বিল):** The Bill of Exchange contains an order from the creditor to the debtor to pay a certain person after a certain period.

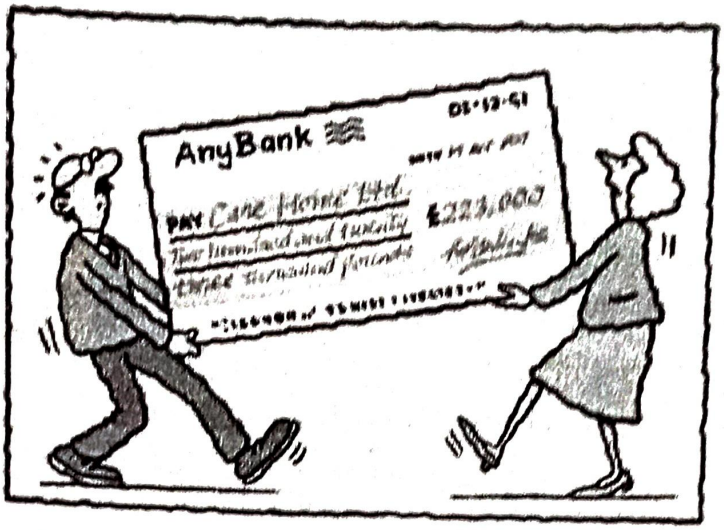


Bill of Exchange

The person who draws it is called drawer (creditor) and the person on whom it is drawn is called drawee (debtor) or acceptor.

The person to whom the amount is payable is called payee.

3. **Check as Negotiable Instrument** (আলোচনা সাপেক্ষ হিসাবে পরীক্ষা করা): A Check (cheque in royal Britain) is a bill of exchange drawer a specified banker not expressed to be payable otherwise than on demand.



It is an instrument in writing, containing unconditional order, signed by the maker (depositor), directing a certain banker to pay a certain sum of money to the bearer of that instrument.

Some other instruments have acquired the character of negotiability by customs or usage of trade.

Negotiable instruments by custom or usages are mainly, the government promissory notes, delivery orders, and railway receipts have been held to be negotiable by usage or custom of the trade.

?	**Discuss the Types of Negotiable Instruments.**

2.5 Classification of Negotiable Instruments
(আলোচনা সাপেক্ষে সরঞ্জামের শ্রেণিবিভাগ)

We can study negotiable instruments under the following broad classifications. These classifications depend on various features like transferability, negotiability, rights of holders, etc.

1. **Bearer Instruments** (বহনকারী সরঞ্জাম): There are two important conditions for negotiable instruments to become payable to bearers. Firstly, parties to the transactions must express it to be so payable. Secondly, the only endorsement for it should be an endorsement in blank.

   These two requirements basically imply that any holder of such instruments can obtain payment for them. For example, a bill of exchange is payable to any person who holds it. These bearer instruments include cheques, bills of exchange and promissory notes.

2. **Order Instruments (অর্ডার সরঞ্জাম):** Negotiable instruments can often be payable to order in certain cases. They are payable when the instruments expressly state them to be so. Furthermore, they may be payable to order only to a specific person. The only requirement is that there should be no prohibition on their transferability.
3. **Inland Instruments (অভ্যন্তরীণ যন্ত্রপাতি):** Section 11 of the NI Act deals with inland instruments. This provision basically regulates instruments that are drawn and made payable in India. Alternatively, they may be payable outside India but only if they are drawn upon by an Indian resident.
4. **Foreign Instruments (বিদেশি সরঞ্জাম):** Every instrument that is not inland automatically becomes a foreign instrument. These instruments are drawn in a foreign country but may be payable within or outside India. They may even originate in India but only for payment to a person who resides abroad.
5. **Demand Instruments (চাহিদা ডিভাইস):** Sometimes, an instrument may not specify a time period during which it remains payable. Such instruments are generally payable whenever the bearer demands. Examples of such instruments include promissory notes and bills of exchange.
6. **Time Instruments (সময় সরঞ্জাম):** Unlike demand instruments, time instruments carry a fixed future date for payment. For example, a promissory note may carry a maturity date arising after 24 months of its issue. Such instruments may even become payable upon the happening of a specific future event.
7. **Ambiguous Instruments (সময় দ্ব্যর্থহীন সরঞ্জাম):** An ambiguous instrument is basically 0ne that may be either a bill or a note for its holder. Such situations arise in peculiar circumstances only. For example, sometimes the drawee may be a fictitious person or he may be incompetent to contract.

   Under such circumstances, the holder of such instruments may treat them either as bills of exchange or as promissory notes. Section 17 of the Negotiable Instruments Act deals with such situations.
8. **Incomplete instruments (অসম্পূর্ণ যন্ত্র):** Incomplete instruments lack certain essential requirements of typical negotiable instruments. In such cases, the holder of the instrument has the authority to complete it up to the amount mentioned therein. This, in turn, results in the creation of legally binding negotiable instrument payable by law. Not only the first holder but also any subsequent holder who procures such instruments can complete them.

?	**Describe the Classification of Negotiable Instruments.**

2.6 Definition Of Promissory Note
(প্রতিজ্ঞা পত্রের সংজ্ঞা)

A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand to the payee, or at fixed or determinable future time, certain in money, to order or to bearer. Bank note is frequently referred to as a promissory note, a promissory note made by a bank and payable to bearer on demand.

Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."

The person who makes the promissory note and promises to pay is called the maker. The person to whom the payment is to be made is called the payee.

Example: "I acknowledge myself to be indebted to B in Taka 1,000 to be paid on demand, for value received."

Promissory note is a signed document containing a written promise to pay a stated sum to a specified person or the bearer at a specified date or on demand.

?	**Define Promissory Note.**

2.7 Essential Elements Of Promissory Notes
(প্রতিজ্ঞাপত্রের অপরিহার্য উপাদান)

From the definition, it is clear that a promissory note must have the following essential elements. An instrument to be a promissory note must possess the following elements:

1. **It must be in writing (ইহা লিখিত হতে হবে):** A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing, etc.) is unimportant, but it must be in any form that cannot be altered easily.
2. **It must certainly an express promise or clear understanding to pay (ইহা অবশ্যই দ্রুতগামী প্রতিশ্রুতি বা পরিষ্কারভাবে বুঝা যাবে):** There must be an express undertaking to pay. A mere acknowledgment is not enough. The following are not promissory notes as there is no promise to pay.
3. **Promise to pay must be unconditional (পরিশোধের নিঃশর্ত প্রতিশ্রুতি প্রদান):** A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not depend upon the happening of some outside contingency or event. It must be payable absolutely.
4. **It should be signed by the maker (ইহা প্রস্তুত কারক দ্বারা স্বাক্ষরিত হওয়া আবশ্যক):** The person who promises to pay must sign the instrument even though it might have been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may be in pencil or ink, a thumb mark or initials.

5. **The maker must be certain (প্রস্তুত কারককে নিশ্চিত থাকতে হবে):** The note self must show clearly who the person is agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liability cannot be in the alternative.

6. **The payee must be certain (পরিশোধকারীর নিশ্চিত থাকতে হবে):** The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation. A note payable to the maker himself is not pronate unless it is indorsed by him. In case, there is a mistake in the name of the payee or his designation; the note is valid, if the payee can be ascertained by evidence. Even where the name of a dead person is entered as payee in ignorance of his death, his legal representative can enforce payment.

7. **The promise should be to pay money and money only (প্রতিশ্রুতিদাতাকে শুধুমাত্র টাকা এবং অর্থ মূল্য পরিশোধ করতে হবে):** Money means legal tender money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.

8. **The amount should be certain (অর্থের পরিমাণ সুনিদৃষ্ট হওয়া উচিত):**One of the important characteristics of a promissory note is certainty—not only regarding the person to whom or by whom payment is to be made but also regarding the amount.

   However, paragraph 3 of Section 5 provides that the sum does not become indefinite merely because

   (a) There is a promise to pay amount with interest at a specified rate.
   (b) The amount is to be paid at an indicated rate of exchange.
   (c) The amount is payable by installments with a condition that the whole balance shall fall due for payment on a default being committed in the payment of anyone installment.

9. **Other formalities (অন্যান্য আনুষ্ঠানিকতা):** The other formalities regarding number, place, date, consideration etc. though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date. Even in such a case, omission of date does not invalidate the instrument and the date of execution can be independently ascertained and proved.

10. **Definite period of time (সুনির্দিষ্ট সময়):** The promissory note may be payable on demand or after a certain definite period of time.

Thus, it is clear that the features are key to establish a negotiation between the parties. To conduct the promissory bill legally there is no alternative but to follow the rules.

?	**State the principal features or essential elements of a Promissory note.** *[BBA Professional 2011]*

2.8 Definition of Bill of Exchange
(বিনিময় বিল এর সংজ্ঞা)

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at fixed or determinable future time a sum certain in money to order or to bearer.

According to Section 5 of the act, " bill of exchange is "an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument". It is also called a Draft.

A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.

Example: Rajib has given a loan of Taka Twenty Thousand to Noyon, which Noyon has to return. Now, Rajiv also has to give some money to Abul. In this case, Rajiv can make a document directing Noyon to make payment up to Taka Twenty Thousand to Abul on demand or after expiry of a specified period. This document is called a bill of exchange, which can be transferred to some other person's name by Abul.

?	**Define Bill of Exchange.**

2.9 Essential Elements of Bill of Exchange
(বিনিময় বিল এর অপরিহার্য উপাদান)

A bill of exchange is a written instrument containing an unconditional order, directing a certain person, to pay a certain sum of money only to the bearer of the instrument. It must be signed by the maker. Anyway, a bill of exchange should have the following essential elements or features:

1. Must be in writing
2. Must be signed by the Drawer (maker) of it
3. Must have an order to pay, which is expressed and unconditional
4. The drawer, drawee, and the payee must be certain and definite individuals
5. The amount of money must be certain
6. The payment must be in the terms of money
7. The money must be payable to a definite person or according to his order.
8. Must be stamped.
9. The bill of exchange may be payable on demand or after a definite period of time.

There are the essential elements of bill of exchange.

Thus, a bill of exchange like a promissory note may be written in any language. It may be written in any form of words provided the requirements of the section are complied with. In order that an instrument may be called a bill of exchange it should satisfy the above conditions.

?	**State the principal features or essential elements of a Bill of Exchange.** *[BBA Professional 2011]*

2.10 Difference between Promissory Note and Bill Of Exchange
(প্রতিজ্ঞাপত্র ও বিনিময় বিল এর মধ্যে পার্থক্য)

A promissory note contains an unconditional promise by the maker to pay to the payee or his order; in a bill of exchange there is an unconditional order to the drawee to pay according to the drawer's direction.

Differentiating Points	Promissory note/ (Pro-note or Hand note)	Bill of exchange
Definition	A promissory note is a written instrument containing an unconditional duty to pay a certain sum of money only to the bearer of the instrument. It must be signed by the maker	A bill of exchange is a written instrument containing an unconditional order, directing a certain person, to pay a certain sum of money only to the bearer of the instrument. It must be signed by the maker. (The maker of it, is called "Drawer"; the person who is directed to pay, is called, "Drawee" ; and the person who will receive the money, is called "Payee")
Number of parties	In promissory note, there are two parties: a) the maker; and b) the payee.	In a Bill of exchange, there are three parties: a) the drawer; b) the drawee; and c) the payee.
Promise and order	In a promissory note, there is a **promise** to pay.	In a bill of exchange, there is an **order** to pay.
Acceptance	In a promissory note, no acceptance is necessary.	A bill of exchange requires to be accepted by the drawee.
Liability	The maker of the promissory note is primarily liable on the instrument.	The drawer (maker) of a bill is liable only when the drawee does not accept the instrument.
Notice of dishonor	In case of promissory note, notice of dishonor to the maker is not necessary.	In case of a bill of exchange, notice of dishonor must be given to all persons liable to pay.
Protest	In case of dishonor of a promissory note, protest is not necessary.	In case of dishonor, a foreign bill must be protested if such a protest is necessary according to law of the place where it is drawn.
Relationship	In a promissory note the maker stands in an immediate relationship to the payee.	Ina bill of exchange a drawee stands in immediate relationship with the acceptor and not to the employee.

Thus, it's clear that along with the differences between the bill of exchange and promissory note, there are a few similarities like both the two instruments are not payable to the bearer on demand.

?	**Differentiate between a Promissory Note and a Bill of Exchange.** *[BBA (Prof.) 2016]*

2.11 Definition of Cheque
(চেকের সংজ্ঞা)

Cheque is a very common form of negotiable instrument. If you have a savings bank account or current account in a bank, you can issue a cheque in your own name or in favor of others, thereby directing the bank to pay the specified amount to the person named in the cheque.

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. (Section 6).

A cheque is also, therefore, a bill of exchange with two additional qualification:

- It is always drawn on a specified banker.
- It is always payable on demand.

Actually, a cheque is an order by the account holder of the bank directing his banker to pay on demand, the specified amount, to or to the order of the person named therein or to the bearer.

?	**Define Cheque.**	**[BBA (Prof.) 2017]**

2.12 Essential Features of Cheque
(চেকের অপরিহার্য বৈশিষ্ট্য)

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it contains the electronic image of a truncated cheque and a cheque in the electronic form. If one takes a close look at the definition of a cheque, it becomes clear that a cheque has the following essential elements or characteristics.

1. **It must be in writing (ইহা লিখিত হতে হবে):** A cheque must be in writing. An oral order to pay does not constitute a cheque.
2. **It should be drawn on banker(ইহা ব্যাংকাদের দ্বারা প্রদেয়):** It is always drawn on a specified banker. A cheque can be drawn on a bank where the drawer has an account, saving bank, or current.
3. **It contains an unconditional order to pay(ইহাতে পরিশোধেরনিঃশর্ত আদেশ প্রদান করা হয়):** A cheque cannot be drawn so as to be payable conditionally. The drawer's order to the drawee bank must be unconditional and should not make the cheque payable dependent on a contingency. A conditional cheque shall be invalid.
4. **The check must have an order to pay a certain sum (ইহাতে নির্দিষ্ট পরিমান অর্থ পরিশোধের আদেশ প্রদান করা হয়):** The cheque should contain an order to pay a certain sum of money only. If a cheque is drawn to do something in addition to, or other than to pay money, it cannot be a cheque.
5. **It should be signed by the drawer and should be dated (ইহা প্রদানকারী দ্বারা স্বাক্ষরিত হওয়া আবশ্যক এবং তারিখের উল্লেখ থাকা উচিত):** A cheque does not carry any validity unless signed by the original drawer. It should be dated as well.

6. **It is payable on demand (ইহা চাহিদা অনুসারে প্রদেয়):** A cheque is always payable on demand.
7. **Validity (বৈধতা):** A cheque is normally valid for six months from the date it bears. Thereafter it is termed as stale cheque. A post-dated or antedated cheque will not be invalid. In both cases, the validity of the cheque is presumed to commence from the date mentioned on it.
8. **It may be payable to the drawer himself (ইহা ডয়ার সয়ং প্রদান করতে পারে):** Cheques may be payable to the drawer himself/herself. It may be drawn payable to bearer on demand unlike a bill or a pro-note.
9. **Banker is liable only to the drawer (ব্যাংকার শুধুমাত্র ড্রয়ারের নিকট দায়বদ্ধ থাকবে):** The banker on whom the cheque is drawn shall be liable only to the drawer. A holder or bearer has no remedy against the banker if a cheque is dishonored.
10. **It does not require acceptance and stamp (এটা গ্রহণে সই এবং স্ট্যাম্প প্রয়োজন হয় না):** Unlike a bill of exchange, a cheque does not require acceptance on part of the drawee. There is, however, a custom among banks to mark Cheques as 'good' for the purpose of clearance. But this marking is not an acceptance. Similarly, no revenue stamp is required to be affixed on Cheques.

Cheques have the distinguishable features laid down by the negotiable instrument act. Holder or bearer has abided the rules in order to avert the bounce back or dishonored from the bank.

1. **Cheques is an instrument in writing (চেক লেখার একটি উপকরণ):** A cheue must be in writing. It can be writing in ink pen, ball point pen, typed or even printed. Oral orders are not considered as cheques.
2. **Cheque contains an unconditional order (চেকটিতে একটি নিঃশর্ত আদেশ রয়েছে):** Every cheque contains an unconditional order issued by the customer to his bank. It does not contain a request for payment. A cheque containing conditional order is dishonored by the bank.
3. **Cheque is drawn by a customer on his bank (চেক তার ব্যাংকের কোনো গ্রাহক আঁকেন):** A cheque is always drawn on a specific bank mentioned therein. Cheque book facility is made available only to account holder who are supposed to maintain certain minimum balance in the account.
4. **Cheque must be signed by customer (চেক অবশ্যই গ্রাহক স্বাক্ষরিত হতে হবে):** A cheque must be signed by customer (accountholder).Unsigned cheques or signed by person other than customers are not regarded as cheque.
5. **Cheque must be payable on demand (চেকটি অবশ্যই চাহিদা অনুসারে প্রদানযোগ্য হবে):** A cheque when presented for payment must be paid on demand. If cheque is made payable after the expiry of certain period of times then it will not be a cheque.

6. **Cheque must mention exact amount to be paid (চেক প্রদান করতে হবে সঠিক পরিমাণ উল্লেখ করা উচিত):** Cheque must be for the money only. The amount to be paid by the banker must be certain. It must be written in words and figures.
7. **Payee must be certain to whom payment is made (প্রদানকারীর অবশ্যই নিশ্চিত হওয়া উচিত কার কাছে অর্থ প্রদান করা হয়েছে):** The payee of the cheque should be certain whom the payment of a cheque is to be made i.e. either real person or artificial person like joint stock company .the name of the payee must be written on the cheque or it can be made payable to bearer.
8. **Cheque must be duly dated by customer of bank (চেক অবশ্যই যথাযথভাবে ব্যাংকের গ্রাহক দ্বারা নির্ধারিত হতে হবে):** A cheque must be duly dated by customer of bank. A cheque must be indicated clearly date, month and the year. A cheque is valid for a period of three months from the date of issue.
9. **Cheque has three parties, Drawer, Drawee &Payee (চেকের তিনটি পক্ষ রয়েছে, ড্রয়ার, ড্রই এবং পী):**

Drawer-A drawer is a person who draws a cheque.

Drawee- A drawee is a bank on whom a cheque is drawn.

Payee- A payee is a person in whose favour a cheque is drawn.

?	**Discuss the Essential features/ Characteristics of Cheque.**

2.13 Different Types of Cheque
(চেকের প্রকারভেদ)

There are two types of cheque: a) Open cheque; and b) Crossed cheque.

1. **Open cheque(উন্মুক্ত চেক):** An open cheque is the cheque which is payable in cash across the counter of the bank.
2. **Crossed cheque(আড়াআড়ি রেখা যুক্ত চেক):** A crossed cheque is the cheque which has two short parallel lines marked across its face. A cheque marked in this fashion can be paid only to another bank.

?	**Discuss the different types of Cheque.**	**[NU 2019]**

2.14 Difference Between Bill Of Exchange And Cheque
(বিনিময় বিল এবং চেকের মধ্যে পার্থক্য)

'Cheque' is an instrument which contains an unconditional order, drawn on a banker, directing to pay a certain sum of money to the person whose name is specified in the instrument. 'Bill of Exchange' is a document contains an unconditional order, directing a person, to pay a certain amount to a specified person. There are some differences between bill of exchange and Cheque. These are as follows:

Differentiating points	Bill of exchange (বিনিময় বিল)	Cheque (চেক)
1. Definition	**A bill of exchange** is a written instrument containing an unconditional **order**, directing a certain person, to pay a certain sum of money only to the bearer of the instrument. It must be signed by the maker.	**A cheque** is a bill of exchange drawn upon a specified bank and payable on demand.
2. Drawn upon	A bill of exchange can be drawn upon any person, including a bank.	A cheque can be drawn only upon a bank.
3. Acceptance	A bill of exchange requires acceptance.	A cheque does not require any acceptance.
4. Time of Payment	The acceptor of a bill of exchange is allowed a grace period of three days to make the payment.	A cheque is always payable on demand.
5. Crossing	There is no provision for crossing a bill.	A cheque may be crossed.
6. Necessity of stamp	A bill of exohange must be stamped.	A cheque does not require any stamp.
7. Nature	Every bill of exchange is not a cheque.	But, every Cheque is a bill of exchange.
8. Counter	The payment of a bill cannot be countermanded.	The payment of a cheque may be countermanded by the drawer.
9. Notice of dishonor	In case of bill of exchange it is necessary to give notice of dishonor, except in certain special cases.	If a bank fails to pay a cheque, it is not necessary to give notice of dishonor to the drawer to make him liable to compensate the payee.

These two terms sound the same, which becomes the cause of confusion for many people. Cheque and bill of exchange both are used to make payments easily. However, the cheque itself is a type of bill of exchange, used to discharge the liabilities and so it consists of all the features of a bill of exchange. Not only in business, but individuals, government agencies, and other institutions also use the cheque to make payments but the bill of exchange is mostly used in business.

?	**Distinguish between Bill of exchange and Cheque.**	***[BBA (Professional) 2012, 07]***

2.15 Holder and Holder in Due Course
(ধারক এবং কালক্রমে ধারক)

Holder (ধারক): According to the negotiable instruments Act 1881, section 8, holder means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

The person legally entitled to receive the money due on the instrument, is called the HOLDER.

The "holder" of a promissory note, bill of exchange or cheque means the payee or indorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamidar. Holder" "Payee"(Section 8)

Explanation: Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

Holder in due course (কালক্রমে ধারক): According to the negotiable instruments Act 1881, section 9, "holder in due course means any person who, for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or endorsee thereof if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that defect existed in the title of the person from whom he derived his title."

Explanation: For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions of section 58.

Thus, a person becomes a holder in due course of a negotiable instrument if the following conditions are satisfied:

The negotiable instrument must be in the possession of the holder in due course.

The negotiable instrument must be regular and complete.

The instrument must have been obtained for valuable consideration, i.e., by paying its full value.

The instrument must have been obtained before it is matured.

The holder in due course must obtain the instrument without having sufficient cause to believe that any defect existed in the title of the transferor.

?	**Define Holder and Holder in due course.**	**[BBA (Prof.) 2013, 2015, 2017]**

2.16 Banker's Draft
(ব্যাঙ্কারস খসড়া)

A bill of exchange is sometimes called a draft. A bill of exchange drawn by a bank is called a banker's Draft. Banker's drafts are of two kinds: i) from one office to another of the same bank and ii) from one bank to another.

The characteristics /features of bank drafts are stated below:

- It is drawn by a banker upon its branch or upon another bank.
- It is payable on demand.
- It cannot be payable to bearer.
- It cannot be stopped or countermanded, except by order of the court.

A banker's draft is a cheque (or check) provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

?	**What is mean by Banker's Draft?**

2.17 Differentnt Types of Bills and Notes
(বিভিন্ন প্রকারের বিল এবং খসড়া)

There are different types of notes and bills are used in modern business. Different bills have the different sort of scope, nature, responsibility and incur liability. Negotiable instrument act has vested different types of notes and bills. Let's have a look on them-

1. **Joint notes and Bills(যৌথ নোট এবং বিল):** A promissory note or a bill of exchange may be signed by two or more persons jointly. In such cases their liabilities are joint and several.
   A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees. [Section 13(2)]
2. **Bearer Instrument (বাহকের দলিল):** Bearer Instrument is an instrument is payable to bearer when it is expressed to be so payable. Any person in lawful possession of it is entitled to enforce payment due on it. It is transferable by mere delivery. Promissory note and bills of exchange cannot be payable to bearer.
3. **Order Instruments (আদেশের দলিল):** Order Instruments is an instrument payable to order when it is expressed to be payable to the order of a specified person or to the specified person or his order or to the specified person without addition of the word 'or his order'.
4. **Inland bills (অন্তর্দেশীয় বিল):** Inland bills are bills drawn in Bangladesh and made payable in or drawn upon any person resident in Bangladesh. Inland bills need not be protested for dishonor.

   A promissory note, bill of exchange or cheque drawn or made in Bangladesh, and made payable in, or drawn upon any person resident in, Bangladesh shall be deemed to be an inland instrument. (Section 11)

5. **Foreign bills (আন্তর্দেশীয় বিল):** Foreign bills are, bills drawn outside Bangladesh and payable outside Bangladesh or drawn outside Bangladesh and payable in Bangladesh or drawn in Bangladesh on person resident outside Bangladesh and payable outside Bangladesh.

   Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. (Section 12)

6. **Documentary bills (তথ্যযুক্ত বিল):** Documentary bills are bills to which shipping documents are attached. These are negotiated through bank against payment of bill.

7. **Sight Bill (দৃশ্যমান বিল):** Sight Bill is a bill payable on demand or at a fixed future time. Such instrument must be presented within a reasonable time after its issue to make the drawer liable.

8. **Time Bills (সময় বিল):** Time Bills are bill payable on a fixed date or after a specified period. In this case period of limitation starts running from date of maturity of the instrument.

9. **Escrow (জিম্মা):** Escrow are the bills endorsed or delivered to a person on the understanding that it will be paid only if certain conditions are fulfilled.

10. **Accommodation Bill (অসমঝোতার বিল):** Accommodation Bill is a bill similar to trade bill but not supported by any consideration or transaction.

11. **Fictitious Bill (কল্পিত বিল):** Fictitious Bill is such bill in which the name of drawer and payee are fictitious. Such bills are not enforced by law.

    An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.(Section 42)

12. **Forged Bills (জাল বিল):** Forged Bills are bills in which name of the drawer or payee has been forged. These are not enforced by law.

13. **Inchoate instruments (অসংহত বিল):** Inchoate instruments are an incomplete or blank negotiable instruments properly stamped and signed. An inchoate instrument is not a negotiable instrument until it is completed. Principle of estoppel is applicable for this. The signer of this instrument is liable to the holder and holder in due course.

14. **Set of Bills (গুচ্ছ বিল):** Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished. (Section 132)

    Exception: When a person accepts or indorses different parts of the bill in favor of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill.

There are different types of notes and bills as per the provision of the Negotiable instrument act. Different bill have different use and sometimes they are not enforced by law.

?	**State Different types of Bills and Notes.**

2.18 Definition of Acceptance and Types of Acceptance
(স্বীকৃতির সংজ্ঞা এবং স্বীকৃতির প্রকারভেদ)

Definition of Acceptance (স্বীকৃতির সংজ্ঞা): The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. It has been defined as the signature of the drawee of a bill who has signed his assent upon bill and delivered it or given notice of such signing to the holder to some person on his behalf.

When Drawee draws a bill and the Drawee delivers it to the holder of the bill or gives notice of acceptance to the holder of the bill then it is termed as Acceptance.

An acceptance of a bill may be general or qualified. An acceptance to be valid must be-

(a) In writing,
(b) Signed by the drawee or his agent,
(c) On bill of exchange, and
(d) Completed by delivery to the holder or by notice of acceptance to him or some person on his behalf.

Types of Acceptance (স্বীকৃতির প্রকারভেদ): Acceptance may be either i) General Acceptance or ii) Qualified Acceptance.

1. **General Acceptance:** When the drawee, while accepting the bill, does not attach any condition or qualification to it, it is called general acceptance.
2. **Qualified Acceptance:** The acceptance is qualified when it is given subject to some conditions or qualifications.

Thus we can conclude that when drawee draws a bill and drawee deliver it without imposing any condition then it termed as acceptance. Depends upon the condition acceptance have two types.

?	**Discuss different types of Acceptance.**

2.19 The Time and Placement of Presentment
(সময় এবং আদালতে জুরির বিবৃতি নির্ধারণ)

A bill which requires to be accepted must be presented for acceptance before the drawee or his authorized agent.

1. **Presentment for acceptance (স্বীকৃতির জন্য আদালতে জুরির বিবৃতি):** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

   If the drawee cannot, after reasonable search, be found, the bill is dishonored.

   If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonored.

   Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient. (Section 61)

2. **Drawee's time for deliberation (আলোচন এর জন্য হুণ্ডিপ্রেরক এর সময় নির্ধারণ):** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.(Section 63)

Where acceptance is obligatory, it must be made within reasonable time. It must be within business day. If a bill, which requires acceptance, is not presented for acceptance in accordance with rules mentioned above, the drawer and all indorses are discharged from their liability to the holder.

?	**Discuss the time and placement of Presentment.**

2.20 When Presentment for Acceptance is Not Necessary
(যখন স্বীকৃতির জন্য আদালতে জুরির বিবৃতি প্রয়োজন হয়না)

Presentment for acceptance is not necessary in the following cases:

1. When after a reasonable search the drawee cannot be found (Section 61)
2. When the drawee is insolvent or dead. (Section 75)
3. When the bill is drawn on anon existing or factious person or on a person who is incapable of entering into contracts (e.g., a minor, lunatic) (Section 91)

?	**In which circumstances Presentment for Acceptance is not necessary?**

2.21 Who Can Accept a Bill?
(বিল গ্রাহক কে?)

The person who can accept the bill are:

- **(i)** Drawee of the bill of exchange; or
- **(ii)** All or some of the several drawees; (Section 34) or
- **(iii)** A person named in the bill as a drawee in case of need; or
- **(iv)** An acceptor for honor; or
- **(v)** The duly authorized agent of the drawee; (Section 75)
- **(vi)** In case of death, to his legal representative; and
- **(vii)** In case insolvency of drawee, to his assignee.
- **(viii)** The official assignee or official receiver, when the drawee has become involvement. (Section -75).

The above mentioned persons have the right to accept a bill. Provisions regarding accepting a bill are specified in the act.

?	**Who can accept a Bill?**

2.22 Definition of Negotiation, Delivery and Negotiation by Delivery (আলোচনার মাধ্যমে ছিরিকরণ, অর্পণ এবং আলোচনার মাধ্যমে অর্পণ এর সংজ্ঞা)

1. **Negotiation (আলোচনার মাধ্যমে ছিরিকরণ):** Negotiation may be defined as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name.

   Section 14 of the Act states the definition of Negotiation "When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated." (Section 14)

   The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of. Negotiation thus requires two conditions to be fulfilled, namely:

   - There must be a transfer of the instrument to another person; and
   - The transfer must be made in such a manner as to constitute the transferee the holder of the instrument.

   Handing over a negotiable instrument to a servant for safe custody is not negotiation; there must be a transfer with an intention to pass title.

2. **Delivery (অর্পণ):** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

   As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

   As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

   A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

   A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof. (Section 46)

   From section 46 it follows that delivery may be actual or constructive. Actual delivery means giving actual possession. Constructive delivery happens when a negotiable instrument is delivered to an agent, clerk or servant on his behalf.

3. **Negotiation by delivery (ব্যাপারের মাধ্যমে বর্ণন):** Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. (Section 47)

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

Write notes on Negotiation, Delivery, and Negotiation by Delivery.

2.23 Difference between Negotiation and Assignment (ব্যাপারের ও [illegible] মধ্যে পার্থক্য)

Negotiable instrument can be transferred from one person to another by either negotiation or by assignment. The Negotiable Instrument Act does not deal with transfer of negotiable instruments by assignment. Negotiation means transfer of a negotiable instrument to any other person so as to constitute that person the holder of such negotiable instrument. Whereas Transfer of a right to receive the payment of a debt by one person (viz., assignee) to another person (viz., assignee) by way of a written document is called as assignment. Distinction between Negotiation and Assignment:

Differentiating points	Negotiation	Assignment
Applicable Act	If a negotiable instrument is transfer by way of negotiation, Negotiable Instrument Act, 1881 applies.	Where any right is transferred by way of assignment, the Transfer of Property Act applies.
Meaning	Negotiation means transfer of a negotiable instrument to any other person so as to constitute that person the holder of such negotiable instrument.	Transfer of a right to receive the payment of a debt by one person (viz., assignee) to another person (viz., assignee) by way of a written document is called as assignment.
Scope	Negotiation can be made for transferring negotiable instrument only.	Assignment can be made of any right.
Method or manner	A bearer instrument can be negotiated merely by delivery and an order instrument can be negotiated by endorsement and delivery.	Assignment is valid only if it is made in writing and is signed by the assignor.

Notice	Notice of negotiation is not required to be given to any party.	Notice of assignment must be given by the assignee to the debtor.
Consideration	It is presumed that every negotiable instrument was negotiated for consideration.	There is no such presumption in case of assignment.
Burden of proof	The other party has to prove that negotiation was without any consideration.	The assignee has to prove that there some consideration.
Better title	The transferee of a negotiable instrument acquires a title better than that of the transferor, i.e; he becomes a holder in due course.	The assignee does not acquire a title better than that of the assignor.
Stamp duty	Negotiation does not require payment of stamp duty.	Assignment requires payment of stamp duty.

Thus there are differences. The Negotiable Instrument Act does not deal with the general law that regulates the transmission of negotiable instruments by operation of law or devolution. The transfer of a negotiable instrument by assignment is dealt with in accordance with the Transfer of Property Act.

?	**Sate the differences between Negotiation and Assignment.**

2.24 Definition of Endorsement and Types of Endorsement
(অর্পণের সংজ্ঞা এবং অর্পণের প্রকারভেদ)

Definition of Endorsement (অর্পণের সংজ্ঞা): The word endorsement is said to have been derived from Latin 'en' means 'upon' and 'dorsum' meaning 'the back'. Thus usually the endorsement is on the back of the instrument though it may be even on the face of it. Where no space is left on the instrument, the endorsement may be made on a slip of paper attached to it. This attached slip of paper is called 'Allonge'. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser". (Section 15)

Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

3. **Types of Endorsement (অর্পণের প্রকারভেদ):** There are five kinds of endorsements recognized in the Uniform Commercial Code:

1. **Endorsement in blank (সমর্থন ফাঁকা থাকে):** If the endorser signs his name only, the endorsement is said to be 'in blank. (Section 16). The endorser does not specify the name of endorsee with effect that an instrument endorsed in blank becomes payable to the bearer (subject to the provisions as regards crossed Cheques) even though originally payable to order (Section 54) and no further endorsement is requiredfor its negotiation.

Example: If a cheque is payable to 'X or order' and X merely signs on its back, such endorsement is called endorsement in blank. Such endorsement makes it a bearer Cheque which may be further negotiable by mere delivery. But if such a cheque is a crossed one, its payment cannot be made at the counter of the bank, even if it is endorsed in, blank. If the endorsement in blank is followed by endorsement in full, it becomes payable to or to the order of the person mentioned in the last endorsement.

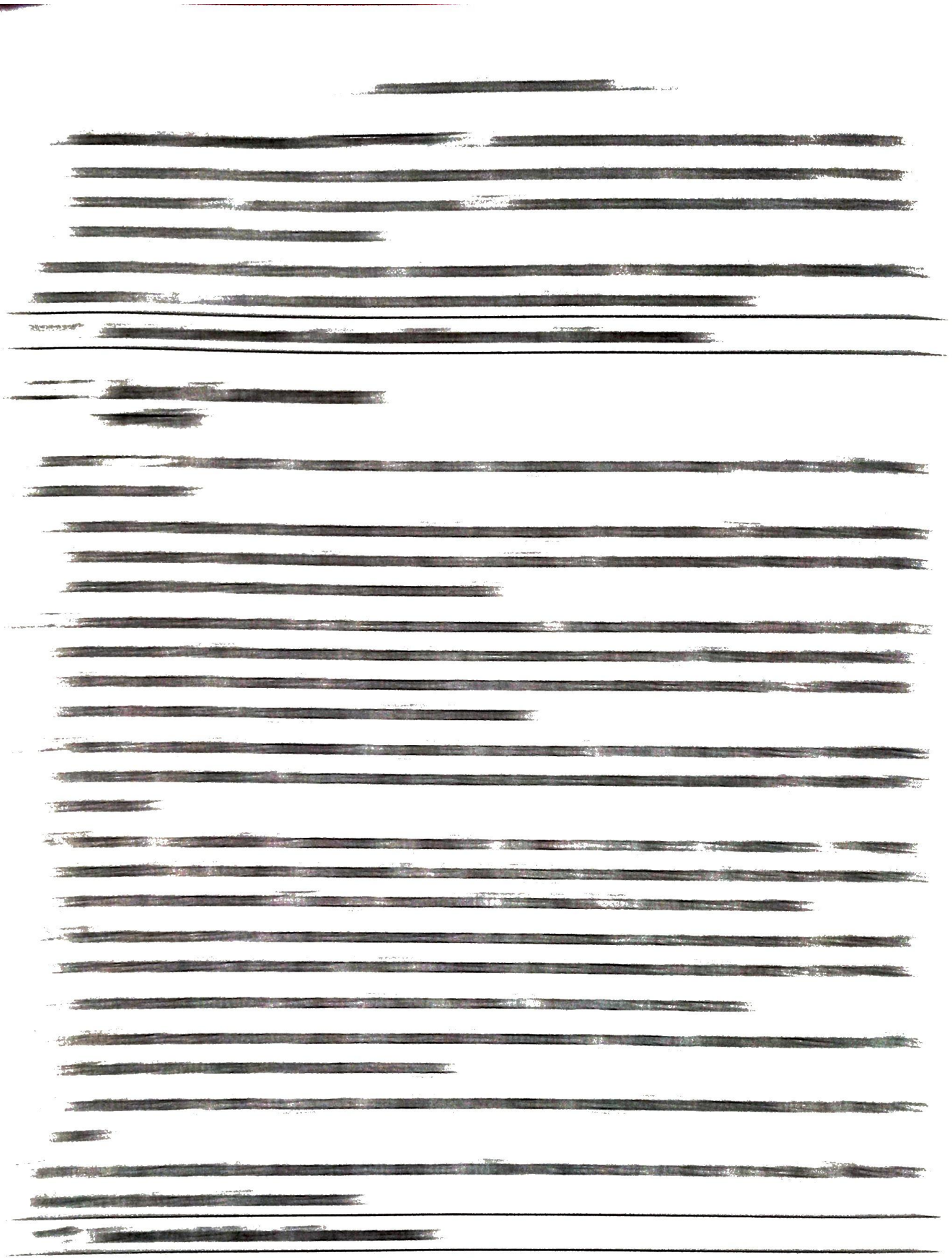
2. **Endorsement in Full (সম্পূর্ণরূপে অনুমোদন):** If in addition to his signature, the endorser adds a direction to pay the amount mentioned in the instrument to or to the order of, a specified person, the endorsement is said to be 'endorsement in full' (Section 16).

3. **Conditional Endorsement (শর্তসাপেক্ষে অনুমোদন):** If the endorser of a negotiable instrument, by express words in the endorsement, makes his liability or the right of the endorsee to receive the amount due thereon, dependent on the happening of a specified event, although such even may never happen, such endorsement is called a conditional endorsement (Section 52). Such an endorser gets the following rights:

(a) He may make his liability on the instrument condition on the happening of a particular event. He will not be liable to the subsequent holder if the specified event does not take place. The endorsee in such a case can sue other parties to the instrument even before the particular event takes place.

(b) He may make the right of the endorsee of the instrument conditional on the happening of a particular event. For example, "pay C if he returns from London". Thus C gets the right to receive payment only on the happening of a particular event i.e., if he returns from London. If the event does not take place, the endorsee cannot sue any of the parties. Conditional endorsements do not make the instruments nontransferable. However, such endorsements are generally not used.

4. **Restrictive Endorsement (সীমাবদ্ধ অনুমোদন):** The endorsement of an instrument may contain terms making it restrictive. Section 50 permits restrictive endorsements which take away the negotiability of such instruments. Restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.



2.26 "Once a Bearer Instruments Always a Bearer Instrument." ("একজন পেশাদার বাহক সবসময় একজন বহনকারী")

A bearer instruments means an instrument, the ownership in which can be transferred from one person to another by mere delivery of the instrument. The instrument can be made originally payable to the bearer or it may be made bearer subsequently by holder making a blank indorsement. The bearer character of the instrument will not be lost ever in those cases where a blank indorsement is followed by a full indorsement.

If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person. (Section 55)

In such a case the indorser in full can't be sued by any person except the person in whose favor he indorsed it, but as regards all parties prior to the indorser in full, the instrument remains transferable by delivery.

Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.[Section 85(2)].

?	**"Once a bearer instrument always a bearer instrument" – Discuss.**

2.27 Parties to a Negotiable Instrument (বিনিময়ে বিলের বিভিন্ন পক্ষসমূহ)

Section 26 of the Act states that every person who is capable of entering into a contract and to bind himself can make, draw, accept or negotiate a negotiable instrument, Section 27 provides that the negotiable instruments may also be drawn, accepted, and negotiated by an authorized agent on behalf of the principal. Different cases of parties' capacity under a negotiable instrument are discussed below:

1. **Minor (অপ্রাপ্তবয়স্ক):** A minor is not competent to contract and, therefore, he cannot bind himself by becoming a party to the negotiable instrument. Section 26 provides that "A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself." An instrument does not void just because a minor is party to it. It remains binding on all other parties.
2. **Lunatics (পাগল):** A lunatic or drunken person who is incapable of understanding the effect of contracting on his interest is on the same footing as that of minor.
3. **Corporation (করপোরেশন):** The contractual capacity of a company or corporation depends on the provisions contained in its memorandum of association or the charter. It may become a party to the negotiable instrument only if so authorized by the charter of the company. In this connection section 26 provides that "Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instrument except in cases in which, under the law for the time being in force, they are so empowered."

4. **Agency (সংস্থা):** A person capable of contracting may also bind himself through his duly authorized agent acting in his name. But a general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind the principal.

   Thus, an agent who has specifically been authorized to draw, accept and negotiate negotiable instruments only can bind his principal. The agent has to make it clear that he is acting in a representative capacity. The form of signature must show that he is willing to act as agent or that he does not willing to incur any personal liability. If this is not so done, he becomes personally liable. (Sections 27 and 28)

5. **Legal representative (আইনি প্রতিনিধি):** A legal representative of a deceased person who signs his personal name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the assets received by him as such (Section 29), The term "legal representative" includes heirs, executors and administrators.

6. **Escrow (জিম্মাদার):** A bill, endorsed or delivered to a person subject to the understanding that it will be paid only if certain conditions are fulfilled, is called an "Escrow". Regarding these bills there is no liability of the drawer until the conditions agreed are fulfilled. However, the rights of a holder in due course will not be affected.

Therefore, a person not capable of entering into a contract cannot bind himself by being a party to the negotiable instrument.

?	**Who can be Parties to a Negotiable Instrument?**

2.28 Liabilities of The Parties
(সংশ্লিষ্ট ব্যক্তির দায়)

Different person or party may incur liability in different situation as per the Act. The liability of the parties to a negotiable instrument is determined by the following rules:

1. **Liability of maker of note and acceptor of bill (নোট প্রস্তুতকারকের এবং বিল গ্রহণের দায়বদ্ধতা):** The maker of a promissory note is bound to pay the amount at maturity, according to the tenor of the note. In default of such payment, the maker is bound to compensate any party to the note for any loss sustained by reason of such default.

   Under Section 32, the liability of the drawee only arises when he accepts the bills. In the absence of a contract to the contrary, the acceptor (drawee) of a bill before maturity is bound to pay the amount thereof only at maturity, in accordance with the apparent tenor of the acceptance. There is no provision in the Act that the drawee as such is liable on the instrument, the only exception being under Section 31 in the case of a drawee of cheque having sufficient funds of the customer in his hands, and even then the liability is towards the drawer and not the payee.

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The following persons incur liability by acceptance; (1) drawee (2) person named as drawee in case of need, and (3) acceptor for honor. Where there are several drawees, each can accept only for himself, unless they are partners.

2. **Liability of drawee of cheque (চেকের ড্রয়ির দায়বদ্ধতা):** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default. (Section 31)

The drawee of the cheque is always a banker. It is the duty of the banker to pay the cheque, provided he has in his hands sufficient fund of the drawer and the funds are properly applicable to such payment. If the banker refuses payment without sufficient cause being shown, he must compensate the drawer for any loss caused by such improper refusal. The bank is required to compensate, not the holder, but the drawer. The amount of compensation that the drawee would have to pay to the drawer is to be measured by the loss or damage say loss of credit, suffered by the drawer. The principle is: "The lesser the value of the cheque dishonored, the greater the damage to the credit of the drawer".

3. **Liability of drawer (ড্রয়ারের দায়বদ্ধতা):** (1) (a) the drawer of a bill of exchange by drawing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonored, he will compensate the holder or any endorser who is compelled to pay it; and

(b) the drawer of a cheque by drawing it, engages that in the case of dishonor by the drawee he will compensate the holder:

Provided that due notice of dishonor of the bill or cheque has been given to or received by the drawer as hereinafter provided.

(2) The drawee of a bill of exchange is not liable thereon until acceptance in the manner provided by this Act. (Section 30)

4. **Liability of legal representative signing (আইনী প্রতিনিধি স্বাক্ষরের দায়বদ্ধতা):** A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such. (Section 29)

5. **Liability of endorser (অনুমোদনের দায়বদ্ধতা):** In the absence of a contact to the contrary, the endorser of a negotiable instrument, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor and that if it be dishonored he will compensate the holder or subsequent endorser who is compelled to pay it for any loss or damage caused to him by such dishonor.

Every indorser after dishonor is liable as upon an instrument payable on demand. (Section 35)

6. **Liability of prior parties to holder in due course (পূর্ববর্তী পক্ষের যথাযথ ধারায় দায়বদ্ধতা):** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. (Section 36)

These are the provisions of liabilities of parties according to act. Liabilities are produces in signing legal representative, endorser, parties of holder in due course etc. Negotiable instrument act laid down provisions of liability and who will be liable in which situation.

?	**Discuss the Liabilities of the Parties.**

2.29 Presentment for Payment
(অর্থ পরিশোধের বিবৃতি)

Every instrument is to be presented for payment. Promissory notes bill of exchange and Cheques must be presented for payment to the maker, acceptors or drawee thereof respectively. It must be presented by or behalf of the holder. The rules regarding presentation for payment are stated below:

1. **Presentation of Promissory note for sight (প্রতিশ্রুতি নোট উপস্থাপনের জন্য):** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. (Section 62)

2. **Presentment for payment (অর্থ প্রদানের জন্য উপস্থাপনা):** Subject to the provisions of section 76, promissory notes, bills of exchange and Cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. (Section 64)

   The provisions of this section are without prejudice to the provisions relating to presentment or acceptance in the case of a bill of exchange.

   Explanation: Where there are several persons, not being partners liable on the negotiable instrument, as makers, acceptors or drawees, as the case may be, and no place of payment is specified, presentment must be made to them all.

3. **Presentment by or to agent, representative of deceased, or assignee of insolvent (এজেন্ট দ্বারা বা উপস্থাপক, নিহত ব্যক্তির প্রতিনিধি বা ইনসিভ্লভেন্টের সহায়তাকারী):** Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee. (Section 75)

4. The place of Presentment (উপস্থাপনা জায়গা):

(i) **Presentment for payment of instrument payable at specified place and not elsewhere (নির্দিষ্ট জায়গায় প্রদেয় এবং অন্য কোথাও না প্রদেয় যন্ত্রের অর্থ প্রদানের জন্য উপস্থাপনা):** A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place. (Section 68)

(ii) **Instrument payable at specified place (নির্দিষ্ট স্থানে প্রদেয় উপকরণ):** A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place. (Section 69)

(iii) **Presentment where no exclusive place specified (উপস্থাপনা যেখানে কোনো একচেটিয়া জায়গা নির্দিষ্ট নেই):** A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the address of the maker, acceptor or drawee given in the instrument, and if no such address is given at the place of business if known, or at the ordinary residence (if known), of the maker, drawee or acceptor thereof, as the case may be. (Section 70)

(iv) **Presentment when maker, etc, has no known place of business or residence (উপস্থাপনা প্রস্তুতকারক, ইত্যাদির কোনো ব্যবসায়ের বা থাকার জায়গা নেই বলে উপস্থাপনা):** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found. (Section 71)

Explanation: In this section and sections 68 and 69, "specified place" means a place sufficiently described so as to enable the person presenting the instrument to locate it.

(v) **Exception of Section 64:** Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof nor is presentment necessary to charge the acceptor of a bill of exchange.

5. The time of presentment (উপস্থাপনের সময়):

(i) **Hours for presentment:** Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours. (Section 65)

(ii) **Presentment for payment of instrument payable after date or sight (তারিখ বা দৃষ্টির পরে প্রদেয় যন্ত্রের অর্থ প্রদানের উপস্থাপনা):** A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity. (Section 66)

(iii) **Presentment for payment of promissory note payable by instalments (কিস্তির মাধ্যমে প্রদেয় প্রতিশ্রুতি নোট প্রদানের জন্য উপস্থাপনা):** A Promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity. (Section 67)

(iv) **Presentment of cheque to charge drawer (ড্রয়ার চার্জ করতে চেকের উপস্থাপনা):** Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer. (Section 72)

(v) **Presentment of cheque to charge any other person (অন্য কোনো ব্যক্তিকে চার্জ দেওয়ার জন্য চেকের উপস্থাপনা):** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person. (Section 73)

(vi) **Presentment of instrument payable on demand (চাহিদা অনুসারে প্রদেয় উপকরণের উপস্থাপনা):** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder. (Section 74)

A negotiable instrument must be presented for payment. The person liable to pay is entitled to see the instrument and after payment he is entitled to have it delivered to him.

?	**Discuss the rules regarding Presentment for Payment.**

2.30 Payment of Negotiable Instruments
(বিনিময় বিলের অর্থ পরিশোধ)

Payment of negotiable instruments are discussed in section 21 to 25 of the Negotiable instrument Act 1881. The rule of negotiable instruments of payment is elaborated below in the light of the act:

1. **Time of payment(অর্থপ্রদানের সময়):** When note or bill payable on demand is overdue: A promissory note or bill of exchange payable on demand shall be deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. [Section 21(A)]

   A note or bill payable at a determinable future time: A promissory note or bill of exchange is payable at a determinable future time within the meaning of this Act if it is expressed to be payable-

   (a) at a fixed time after date or sight; or

   (b) on or at a fixed time after the occurrence of a specified event which is certain to happen, though the time of its happening may be uncertain.[Section 21(B)]

2. **Maturity of a note or bill (নোট বা বিলের মেয়াদপূর্তিতে):**

(i) **Calculating maturity of bill or note payable so many months after date or sight:** In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honor, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. (Section 23)

Example: A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(ii) **Calculating maturity of bill or note payable so many days after date or sight:** In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. (Section 24)

(iii) **When day of maturity is a holiday:** When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. (Section 25)

Explanation: The expression "public holiday" includes Sundays and the days declared by the Government, by notification in the official Gazette, to be public holidays.

3. **Payment in due course(উপযুক্ত সময়ে অর্থ পরিশোধ):** "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. (Section 10)

4. **Usance(প্রথা):** The time allowed for the payment of bills drawn in one country and payable in another (foreign bills) is called usance. The time varies according to the distance between the countries and is determined by customary rules.

Payment in negotiable instrument has been clear through the provisions of the negotiable instrument act. When payment will be done and how it will be done designed as per rule.

?	**Discuss the rules regarding Payment of Negotiable Instruments.**

2.31 Discharge of Parties From Liability
(দায় থেকে দলগুলোর অব্যাহতি)

Parties to negotiable instrument are discharged from liabilities when the right of action on the instrument is extinguished. The right of action on a negotiable instrument is extinguished by the following methods:

(i) **By payment in due course (সঠিক সময়ে অর্থপ্রদানের মাধ্যমে):** The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon to all parties thereto if the instrument is payable to bearer, or has been endorsed in blank and such maker, acceptor or endorser makes payment in due course of the amount due thereon i.e., when the payment has been made to the holder of the instrument at or after maturity in good faith and without notice of any defect in the title to the instrument (Section 82).

(ii) **By cancellations of acceptor's or endorser's name(গ্রাহক বা হস্তান্তরকারীর নামের পরিবর্তনের মাধ্যমে):** The maker, acceptor and endorser respectively of a negotiable instrument is discharged from liability thereon to a holder thereof who has cancelled such acceptor's or endorser's name with the intent to discharge him and to all parties claiming under such holder. In other words, if the holder (payee) of a bill cancels the signature of acceptor (drawee) with an intention to discharge him, both maker (drawer) and the acceptor of such negotiable instrument are discharged from the liability to the holder and to all parties claiming under such a holder [Clause (a) Section 82.]

(iii) **By release (অব্যাহতি প্রদানের মাধ্যমে):** The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon to a holder thereof who has renounced his right in respect of the instrument. The waiver of the right may be expressed or implied [Clause (b) of Section 82].

(iv) **By default of the holder (ধারকের ডিফল্টর রূপে):** If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holiday, to decide whether he will accept the bill, all prior parties not consenting to such an allowance are discharged from liability to such holder. It is because if the drawee fails to signify his acceptance within forty-eight hours, the holder must treat the instrument as dishonored and he must at once give notice to the drawer and to all prior parties, and must not allow time unless they give their consent that more time should be allowed (Section 83).

(v) **By material alteration of the instrument without assent of all parties liable (সংশ্লিষ্ট সকল পক্ষের সম্মতি ব্যতিত দলিলের বিষয়বস্তু পরিবর্তন করে):** Any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties and any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration

thereof (Section 87). The alteration must be so material that it alters the character of the instrument to a great extent. Alteration of the date, alteration of the amount payable, or alteration of the time and the alteration on the place of payment of the instrument are regarded as material alterations of the instrument.

Thus the liability of a party to a negotiable instrument may be discharged or terminated in abovementioned ways.

?	**Examine the different mode of Discharge of Liability of parties to a negotiable instrument.**

2.32 Mode of Dishonour
(অসদারণের ধরন)

When a negotiable instrument is dishonored, the holder must give a notice of dishonor to all the previous parties in order to make them liable. A negotiable instrument can be dishonored either by non-acceptance or by non-payment. A cheque and a promissory note can only be dishonored by non-payment but a bill of exchange can be dishonored either by non-acceptance or by non-payment.

Dishonor by non-acceptance (অগ্রহণযোগ্য অসম্মান): A bill of exchange is said to be dishonored by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonored. (Section 91)

Dishonor by non-payment (অ-অর্থ প্রদানের মাধ্যমে অসম্মান): A promissory note, bill of exchange or cheque is said to be dishonored by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same. (Section 92)

An instrument is also dishonored by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec 76).

Effect of dishonor (অসম্মানের প্রভাব): When a negotiable instrument is dishonored either by non-acceptance or by non-payment, the other parties thereto can be charged with liability. For example if the acceptor of a bill dishonors the bill, the holder may bring an action against the drawer and the indorsers. There is a duty cast upon the holder towards those whom he wants to make liable to give notice of dishonor to them.

There are the options as per the act to dishonor a negotiable instrument. Only bill of exchange can be dishonored by non-acceptance whereas promissory notes, bill of exchanges, and Cheques can be dishonored by non-payment.

?	**Discuss different mode of Dishonor.**

2.33 Notice of Dishonour
(অসদাচরণের বিজ্ঞপ্তি)

Notice of dishonor means the notice which must be given by the holder of a dishonored instrument to all parties liable to pay the amount due on the instrument. Section 93 States the definition of Notice of Dishonor.

Notice of dishonor means the actual notification of the dishonor of the instrument by non-acceptance or by non-payment. When a negotiable instrument is refused acceptance or payment notice of such refusal must immediately be given to parties to whom the holder wishes to make liable. Failure to give notice of the dishonor by the holder would discharge all parties other than the maker or the acceptor (Sec. 93).

Notice by whom: Where a negotiable instrument is dishonored either by non- acceptance or by non-payment, the holder of the instrument or some party to it who is liable thereon must give a notice of dishonor to all the prior parties whom he wants to make liable on the instrument (Section 93). The agent of any such party may also be given notice of dishonor. A notice given by a stranger is not valid. Each party receiving notice of dishonor must, in order to render any prior party.

Liable give notice of dishonor to such party within a reasonable time after he has received it. (Sec. 95)

When an instrument is deposited with an agent for presentment and is dishonored, he may either himself give notice to the parties liable on the instrument or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder. The principal, too, in his turn has the same time for giving notice as if the agent is an independent holder. (Sec. 96)

Notice to whom?

Notice of dishonor must be given to all parties to whom the holder seeks to make liable. No notice need be given to a maker, acceptor or drawee, who are the principal debtors (Section 93). Notice of dishonor may be given to an endorser. Notice of dishonor may be given to a duly authorized agent of the person to whom it is required to be given. In case of the death of such a person, it may be given to his legal representative. Where he has been declared insolvent the notice may be given to him or to his official assignee (Section 94). Where a party entitled to a notice of dishonor is dead, and notice is given to him in ignorance of his death, it is sufficient (Section 97).

Mode of notice: The notice of dishonor may be oral or written or partly oral and partly written. It may be sent by post. It may be in any form but it must inform the party to whom it is given either in express terms or by reasonable intendment that the instrument has been dishonored and in what way it has been dishonored and that the person served with the notice will be held liable thereon.

?	**Write notes on Notice of Dishonor.**

2.34 Notary Public
(লেখ্য প্রমাণক)

The Negotiable Instrument Act, 1881 define the law relating to promissory notes, bill of exchange and Cheques which were enacted and came into force on the first day of March 1882. Section 138 of the Negotiable Instrument Act empowered the government to appoint any person by name or by virtue of his office to be a notary public under this Act.

Notary Public a public officer or a person publicly authorized to draw up or certify contracts, deeds, etc., to protect bills of exchange and discharge other legal duties or matters of a formal character. The executive or other appointing authority appoints Notary Public under the laws of the land.

The Notary public is an officer appointed by the government to exercise the functions of a notary public as laid down in the negotiable Instrument Act. Now, **"The Notaries Ordinance, 1961"** governs the profession of notaries.

Notary has been defined in Section 2(c) of the Notaries Act 1961 - "Notary" means a person appointed as such under this Ordinance:

Notaries ordinance, 1961 and the Notaries Rules, 1964 regulate the profession of the notaries in Bangladesh under which a person is appointed as Notary, Generally, a person who has been practicing as a lawyers for a term not less than seven years or had been a member of Judicial service for a term not less than five years or had been serving as a Government servant in the legislative drafting and Law making process of the Government are eligible for appointment as a Notary.

?	**Define Notary Public.**

2.35 Definition of Noting and Protest
(নোটিং ও প্রতিবাদের সংজ্ঞা)

When a negotiable instrument is dishonored the holder may sue his prior parties i.e., the drawer and the indorses after he has given a notice of dishonor to them. The holder may need an authentic evidence of the fact that a negotiable instrument has been dishonored. Sections 99 and 100 provide convenient methods of authenticating the fact of dishonor of a bill of exchange and a promissory note by means of 'noting' and 'protest'.

Noting: When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonor to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonor, and must specify the date of dishonor, the reason, if any, assigned for such dishonor, or, if the instrument has not been expressly dishonored, the reason why the holder treats it as dishonored, and the notary's charges. (Section 99)

Protest: When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may, within a reasonable time, because such dishonor to be noted and certified by a notary public. Such certificate is called a protest. (Section 100)

Protest for better security: When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest: Section 101 of the Act lays down the contents of a regular and perfect protest which are as follows:

1. The instrument itself or a literal transcript of the instrument; and of everything written or printed thereupon.
2. The name of the person for whom and against whom the instrument has been protested.
3. The fact of and reasons for dishonor i.e. a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public from the person concerned and he refused to give it or did not answer or that he could not be found.
4. The time and place of demand and dishonor.
5. The signature of the notary public.
6. In the case of acceptance for honor or payment for honor the person by whom or for whom such acceptance or payment was offered and effected.

After a note or bill has been noted for dishonor by a Notary Public, it may be got certified by the Notary Public. The protest is the formal certificate given by the Notary Public.

?	**Define Noting and Protest.**

2.36 Definition of Noting and Protest
(সম্মানের স্বীকৃতি)

Acceptance for Honor: An acceptor for honor is a person who, on the refusal by the original drawee to accept the bill or to furnish better security when demanded by the notary, accepts the bill in order to safeguard the honor of the drawer or any endorser. Section 108 define acceptance for honor-

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honor of any party thereto. (Section 108)

Acceptor for honor must specify as to whose honor he is accepting the bill of exchange. Where the acceptor does not express for whose honor it is made, it shall be clear.

Rules regarding acceptor for honor (সম্মানের জন্য গ্রহণকারী সম্পর্কিত বিধি):

1. **Consent (সম্মতি):** Consent of the holder is necessary before a bill can be accepted for honor. (Section 108)
2. **How acceptance for honor must be made (সম্মানের জন্য গ্রহণযোগ্যতা অবশ্যই করতে হবে):** A person desiring to accept for honor must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honor of the drawer or of a particular endorser whom he names, or generally for honor. (Section 109)
3. **Acceptance not specifying for whose honor it is made (কাদের সম্মানের জন্য এটি গ্রহণ করা হয়েছে তা গ্রহণযোগ্যতা):** Where the acceptance does not express for whose honor it is made, it shall be deemed to be made for the honor of the drawer. (Section 110)
4. **Liability of acceptor for honor (সম্মানের জন্য গ্রহণকারীর দায়বদ্ধতা):** An acceptor for honor binds himself to all parties subsequent to the party for whose honor he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honor for all loss or damage sustained by him in consequence of such acceptance.

   But an acceptor for honor is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.(Section 111)
5. **When acceptor for honor may be charged (সম্মানের জন্য গ্রহণকারী যখন চার্জ করা যেতে পারে):** An acceptor for honor cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonored by him, and noted or protested for such dishonor. (Section 112)

Thus the object of such an acceptance for honor is to protect the credit of the party liable on the bill, and to prevent legal proceedings being taken against him.

?	**Discuss the rules regarding Acceptance for Honor.**

2.37 Definition of Noting and Protest
(সম্মানের জন্য অর্থ প্রদানের সংজ্ঞা)

It is a payment which is made by any person for the honor of any party liable on the bill after it has been protested for non-payment.

Section 113 of The Negotiable Instrument Act, 1881 define Payment of Honor-

"When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honor of any party liable to pay the same, provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honor he pays, and that such declaration has been recorded by such notary public."(Section 113)

Right of payer for honor (সম্মানের জন্য প্রদানকারীর অধিকার): Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honor he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.(Section 114)

Acceptance and payment without protest (প্রতিবাদ ছাড়াই গ্রহণ এবং প্রদান): A drawee in case of need may accept and pay the bill of exchange without previous protest. (Section 116)

Just as a bill may be accepted for the honor of a party to bill, it may also be paid for the honor of a party liable to pay the bill. After payments he can recover from that person or any party prior to him.

?	**Define Payment for Honour.**

2.38 Definition of Holder
(ধারক-এর সংজ্ঞা)

A holder is one who has possession of and is entitled to enforce the instrument. So, a person who is named as payee and possesses an instrument is a holder. If the commercial paper is not payable to a particular person (i.e., it is payable to anyone in possession of the paper), anyone who has possession is a holder. An individual who is issued a note or draft is a holder. A person can also become a holder by receiving the draft through "negotiation" of the instrument. Negotiation is discussed separately.

According to Section 8 of N.I.Act 1881 defines 'Holder' as under:

"The holder of a promissory note, bill of exchange or cheque means, any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed its holder is the person so entitled at the time of such loss or destruction"

Note: There are certain exceptions for this rule when the instrument is forged (i.e., the signature of the payor or payee is not genuine). A forged signature does not make the instrument payable to the forger or validly make the instrument bearer paper. A thief or finder of bearer paper, however, is a holder.

Example: Noyon writes a check to Nupur. Nupur is a holder of this draft. If she indorses the check and transfers it to Sathi, Sathi is the new holder. If, however, Sathi had stolen the check from Nupur and forged Nupur's signature, Sathi is not a legal holder of the paper, as she is not legally entitled to enforce the instrument.

?	**Define of Holder.**

2.39 Holder in Due Course
(নিয়মানুসারে স্বত্বাধিকারী)

Holder in Due Course is a legal term to describe the person who has received a negotiable instrument in good faith and is unaware of any prior claim, or that there is a defect in the title of the person who negotiated it.

For example; a third-party check is a holder in due course.

The 3rd party who gets the check is not aware of any prior issues with a check, such as it was overdue, dishonored when presented for payment, had any claims against it,

Holder in Due Course called protected holder or bona fide holder for value.

So Holder in Due Course means;

- If payment is not made on a negotiable instrument when it is due, the holder can use the court system to enforce the instrument.
- Various parties, including both signers and non-signers, may be liable for it.
- Accommodation parties (i.e., guarantors) can also be held liable.

The holder of a negotiable instrument means any person entitled in his name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

A person is called the holder of a negotiable instrument if the following conditions are satisfied:

- He must be entitled to the possession of the instrument in his name and under a legal title.
- He must be entitled to receive or recover the amount from the parties concerned in his name.

The holder in due course is a particular kind of holder. The holder of a negotiable instrument is called the holder in due course if he satisfied the following conditions:-

- The negotiable instrument must have the holder in due course. The **negotiable instrument must be regular and complete in all respects**.
- He obtained the instrument for valuable consideration.
- He becomes the holder of the instrument before its maturity before the amount mentioned in it becomes payable.
- He has no cause to believe that any defect existed in the title of the person from whom he derived his title.

?	**Describe the Holder in Due Course.**

2.40 Differences between Holder and Holder in Due Course
(ধারক ও নিয়মানুসারে স্বত্বাধিকারীর মধ্যে পার্থক্য)

The definition of the terms ''holder'' and holder in due course we may derive the following points of difference between them:

1. **Consideration** (বিবেচনা): The existence of consideration is not essential in the case of the holder but a holder in due course obtains the instrument after paying its full value.

2. **Possession (দখল):** The person entitled to be called holder in due course must become the possessor of the instrument before it becomes payable.

   Whereas in case of holder neither actual possession nor any time limit within which it must be acquired is required.

3. **The defect in the transferor's title (স্থানান্তরকের শিরোনামে ত্রুটি):** The most important point of difference is that the holder in due course acquires an instrument without having sufficient cause to believe that any defect existed in the title of the transferor.

   It means the holder in due course must obtain an instrument after taking all possible care about the transferors' good title. This condition is not essential in the case of the holder.

   A holder in due course possesses the right to sue upon the instrument in his name to recover the amount of the instrument from a liable party to pay others on.

?	**Show the Differences between Holder and Holder in Due Course.**

2.41 Rights of a Holder in Due Course
(একজন নিয়মানুসারে স্বত্বাধিকারীর অধিকার)

The rights of a holder in due course of a negotiable instrument are qualitatively, as matters of law, superior to those provided by ordinary species of contracts:-

1. The rights to payment are not subject to set-off, and do not rely on the validity of the underlying contract giving rise to the debt (for example if a cheque was drawn for payment for goods delivered but defective, the drawer is still liable on the cheque).
2. No notice need be given to any party liable on the instrument for transfer of the rights under the instrument by negotiation. However, payment by the party liable to the person previously entitled to enforce the instrument "counts" as payment on the note until adequate notice has been received by the liable party that a different party is to receive payments from then on.
3. Transfer free of equities—the holder in due course can hold better title than the party he obtains it from (as in the instance of negotiation of the instrument from a mere holder to a holder in due course).
4. Negotiation often enables the transferee to become the party to the contract through a contract assignment (provided for explicitly or by operation of law) and to enforce the contract in the transferee-assignee's own name.
5. Negotiation can be affected by endorsement and delivery (order instruments), or by delivery alone (bearer instruments). In addition, the rights and obligations accruing to the transferee can be affected by the rule of derivative title, which does not allow a property owner to transfer rights in a piece of property greater than his own.

?	**Explain the Rights of a Holder in Due Course.**

2.42 Liability of parties to Negotiable Instruments
(আলোচনা সাপেক্ষে যন্ত্রপাতি পক্ষের দায়বদ্ধতা)

"Negotiable Instrument" means a piece of paper in writing entitling a right to the holder, a certain sum of money. It is a piece of paper which contains some value and is transferable by simple delivery or sometimes by endorsement and delivery.

Section 30 to Section 32 and Section 35 to 42 of the Negotiable Instruments Act deal with the liability of parties to Negotiable Instruments. Liabilities of parties to Negotiable Instruments are as follows:

1. **Liability of Drawer (ড্রয়ারের দায়বদ্ধতা):** According to Section 30 of the Negotiable Instrument Act 1881, The drawer of a bill of exchange or cheque is bound in case of dishonor by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonor has been given to, or received by, the drawer .
2. **Liability of Drawee of Cheque (চেক ড্রয়ের দায়বদ্ধতা):** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default (Section 31 of the Negotiable Instrument Act 1881)
3. **Liability of Makers of note and acceptor of bill (নোট প্রস্তুতকারকদের এবং বিল গ্রহণের দায়বদ্ধতা):** The maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default. (Section 32 of the Negotiable Instrument Act 1881)
4. **Liability of endorse (অনুমোদনের দায়বদ্ধতা):** Liability of endorser In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonor by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonor, provided due notice of dishonor has been given to, or received by, such endorser as hereinafter provided. Every endorser after dishonor is liable as upon an instrument payable on demand. (Section 35 of the Negotiable Instrument Act 1881)
5. **Liability of Prior Parties to a holder in due course (যথাযথভাবে কোনো ধারককে পূর্ব পক্ষের দায়বদ্ধতা):** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.(Section 36 of the Negotiable Instrument Act 1881)

?	**Discuss the Liability of parties to Negotiable Instruments.**

2.43 General Rules for the Liability of Parties
(দলগুলোর দায়বদ্ধতার জন্য সাধারণ বিধি)

The provisions relating to the liability of parties to negotiable instruments are under section 30 to 32 and 35 to 42 of the Negotiable Instrument Act, 1881. The Liability of parties is as follows:

1. **Liability of Drawer (Section 30):** Drawer means a person who signs a cheque or a bill of exchange ordering his or her bank to pay the amount to the payee.

   In case of dishonour of cheque or bill of exchange by the drawee or the acceptor, the drawer of such cheque or bill of exchange needs to compensate the holder such amount. But, the drawer needs to receive due notice of dishonour.

   So, the nature of the drawer's liability on drawing a bill is:

   (i) On due presentation:- It should be accepted and paid accordingly.

   (ii) In the case of dishonour:- Drawer needs to compensate the holder such amount, only when he receives a notice of dishonour by the drawee.

2. **Liability of the Drawee of Cheque (Section 31):** The person who draws a cheque i.e drawer having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required to do so and, or in default of such payment, he shall compensate the drawer for any loss or damage caused by such default.

   The drawee of a cheque will always be a banker. As a cheque is a bill of exchange, drawn on a specified banker by the drawer, the banker is bound to pay the cheque of the drawer, i.e., the customer. For the following conditions are need to be satisfied:

   (i) Sufficient amount of funds to the credit of customer's account should be there with the banker.

   (ii) Such funds are required to be properly applied against the payment of such cheque, e.g., the funds are not under any kind of lien etc.

   (iii) The cheque is duly required to be paid, during banking hours and on or after the date on which it is made payable.

   If the banker unjustifiably refuses to honour the cheque of its customer, it shall be liable for damages.

3. **Liability of Acceptor of Bill and Maker of Note (Section 32):** As per section 32 of negotiable instrument act, in the absence of a contract to the contrary, the maker of a promissory note and the acceptor before the maturity of a bill of exchange are under the liability to pay the amount thereof at maturity.

They need to pay the amount according to the apparent tenor of the note or acceptance respectively. The acceptor of a bill of exchange at or after maturity is liable to pay the amount thereof to the holder on demand.

The liability of the acceptor of a bill or the maker of a note is absolute and unconditional but is subject to a contract to the contrary and may be excluded or modified by a collateral agreement.

4. **Liability of Endorser (Section 35):** An endorser is the one who endorses and delivers a negotiable instrument before maturity. Every endorser has a liability to the parties that are subsequent to him.

   Also, he is bound thereby to every subsequent holder in case of dishonour of the instrument by the drawee, acceptor or maker, to compensate such holder of any loss or damage caused to him by such dishonour. However, he is to compensate only after the fulfilment of the following conditions:

   (i) There is no contract to the contrary.

   (ii) The Endorser has not expressly excluded, limited or made conditional his own liability.

   (iii) And, such endorser shall receive due notice of dishonor.

5. **Liability of Prior Parties (Section 36):** Until the instrument is duly satisfied, every prior party to a negotiable instrument has a liability towards the holder in due course. The prior parties include the maker or drawer, the acceptor and all the intervening endorsers. Also, there liability to a holder in due course is joint and several. In the case of dishonour, the holder in due course may declare any or all prior parties liable for the amount.

6. **Liability Inter-se:** Every liable party has a different footing or stand with respect to the nature of liability of each one of them.

7. **Liability of Acceptor when Endorsement is Forged (Section 41):** An acceptor of a bill of exchange who had already endorsed the bill is not relieved from liability even if such endorsement is forged. This is so even if he knew or had reason to believe that the endorsement was forged when he accepted the bill.

8. **Acceptor's Liability when Bill is drawn in a Fictitious Name:** An acceptor of a bill of exchange who draws a bill in a fictitious name, payable to the drawer's order will be liable to pay any holder in due course. He or she will not be relieved from such liability by reason that such name is fictitious.

?	**Explain the General Rules for the Liability of Parties.**

2.44 Discharge of Negotiable Instrument
(আলোচনা সাপেক্ষে যন্ত্রপাতির নির্গমন)

Discharging of a negotiable instrument means that all the rights of action under it are completely extinguished and it ceases to be negotiated anymore. Under following modes the maker, acceptor and endorser of a negotiable instrument is discharged from liability:

1. **By Cancellation**: Under this scheme, a holder who cancels acceptor's or endorser's name apparently or with intention to discharge him from the negotiable instrument, the latter is said to have discharged.

2. **By release**: A holder thereof who, by means other than cancellation, discharges maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge.

3. **By Payment in the Due Course**: When the payment on an instrument, at its maturity, is made by the party liable then all the parties stand discharged from the liability of negotiable instrument.

4. **By Allowing Drawee**: In this case, if a person holding the negotiable instrument allows the drawee for over 48 hours to consider whether he will accept the same then all the previous who didn't consent to the said allowance stand discharged.

5. **Material Alteration**: In case a material alteration brought in the instrument, all the parties who do not consent to the said alternation stand discharged from the liability.

6. **Notice of Dishonor**: In case the holder of negotiable instrument fails to issue notice of dishonor to all the previous parties, they stand discharged.

7. **By Operation of Law**: Liability against the negotiable instrument also stand discharged in case of legal operations like;

   - Insolvency of debtor
   - Loss of remedy on expiry of the limitation
   - Merger of note into judgement debt
   - Merger of lesser security into higher security

?	**Describe the Discharge of Negotiable Instrument.**

2.15 Material Alteration (Section 87)

The term 'material alteration' indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus it is the alteration, which changes and destroys the legal identity of the original instrument or causes it to speak a different language in legal effect from that which it originally spoke.

According to Sec. 87, What constitutes a material alteration. - Any alteration that changes:

(a) the date,

(b) the sum payable, either for principal or interest,

(c) the time or place of payment,

(d) the number or the relations of the parties,

(e) the medium or currency in which payment is to be made,

(f) or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

The following are considered as material alteration:

1. Alteration of the date of the instrument
2. Alteration of the amount payable
3. Alteration in time of payment
4. Alteration of the place of payment
5. Alteration of rate of interest or any change of party thereto, if any
6. Tearing of the material part of the instrument
7. Where a bill is accepted generally, the insertion of a place of payment
8. Addition of a new party to the instrument
9. Addition of words to a bill of exchange endorsed in blank so as to convert the same into special endorsement

Q What are the Material Alterations.

EXERCISE

1. Discuss the essential elements/features/characteristics of negotiable instrument.
2. Define Bill of Exchange.
3. Define Promissory Note.
4. Discuss the Essential features/ Characteristics of Cheque.
5. Define the term- Negotiation, Delivery, and Negotiation by Delivery.
6. Define Indorsement. Discuss different types of Indorsement.
7. Who can be Parties to a Negotiable Instruments?
8. Examine the different mode of Discharge of Liability of parties to a negotiable instrument.
9. Define Notary Public.
10. Discuss the rules regarding Acceptance for Honor.

National University Questions and Solutions

1 What do you mean by "Negotiable instrument"? ***[BBA Prof.2013,12,11,09,08,05]***

2 Distinguish between Promissory note (Pro-note or Hand note) and bill of exchange. ***[BBA Prof-2012,07]***

3 Discuss the essential elements/features/characteristics of negotiable instrument. ***[BBA Professional 2013,12,11,09,8,07,05,04]***

4 State the principal features or essential elements of a Promissory note and a Bill of Exchange. ***[BBA Professional 2011]***

5. Why is a cheque crossed? ***[BBA Professional 2008]***

ANSWER: A crossed cheque is the cheque which has two short parallel lines marked across its face. A cheque marked in this fashion can be paid only to another bank.

The advantage of crossing a cheque is that it reduces the danger of unauthorized persons getting possession of a cheque and cashing it. A crossed cheque can only be cashed through a bank of which the payee of the cheque is a customer.

6. State the various ways in which a cheque can be crossed. *[BBA Professional 2006]*

ANSWER: There are different modes of crossing a cheque. These are as follows:

1. **General crossing:** The simplest mode of crossing is to put two parallel lines across the face of the cheque. This is called General crossing. A cheque crossed generally will be paid to any bank through which it is presented.
2. **Special crossing:** When the name of bank is written between the parallel lines, it is called Special crossing. A cheque crossed specially will be paid only when it is presented for collection by the bank named between the parallel lines.

So, these are the various ways of crossing a cheque.

6. What is a bill of exchange? Who can accept a bill of exchange? *[BBA Prof. 2004]*

ANSWER: A bill of exchange is a written instrument containing an unconditional order, directing a certain person, to pay a certain sum of money only to the bearer of the instrument. It must be signed by the maker.

The maker of it, is called "Drawer"; the person who is directed to pay, is called, "Drawee"; and the person who will receive the money, is called "Payee"

A bill of exchange requires to be accepted by the drawee.

CHAPTER-03

The Sale of Goods Act, 1930

Syllabus: **The Sale of Goods Act, 1930:** Definitions. Transfer of' Ownership 'Performance of the Contract of Sales.

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3.0 Introduction
(ভূমিকা)

The Sale of Goods in Bangladesh is now regulated under the "Sale of Goods Act, 1930". It applies to the whole of Bangladesh. The act first came into force on the 1st of July 1930. The act contains Sixty-Six sections. Before this enactment Section 76 to 123 of the Contract Act, 1872 was followed in Indo-Pakistan region. It is an Act to define and amend the law relating to the sale of goods.

It is the most common of all commercial contracts and its knowledge of its main principals is essential for all classes of the community. This act lays down special provisions governing the contract of sales of goods .The general law of contract is also applicable to the contracts for the sale of goods unless they are inconsistent with the express provisions of the Sale of Goods Act.

There are some basic features that the Sale of Goods Act 1930 has compared to other acts. Some of these features are – A contract for sale of goods is in every case a contract for sale of movable property. The consideration for sale of goods is money paid or agreed to be paid as price. It involves in every case a transfer of the property in the goods to the buyer for a price.

3.1 Some Fundamental Definitions Described in the Sales of Goods Act 1930
(১৯৩০ সালে বর্ণিত পণ্য বিক্রয় আইনের মৌলিক সংজ্ঞা)

The Sale of Goods Act, 1930 herein referred to as the Act, is the law that governs the sale of goods in all parts of Bangladesh. The Act defines various terms which are contained in the act itself in section 2. Let us see below:-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading dock-warrant, warehouse keeper's certificate, whar-fingers' certificate, railway receipt. warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the

possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes electricity, water, gas, stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "Property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Act and defined in the Contract Act. 1872, have the meanings assigned to them in that Act.

?	**Explain the Some Fundamental Definitions Described in the Sales of Goods Act 1930.** **[NU 2019]**

3.2 Definition of Buyer , Seller and Goods
(ক্রেতা, বিক্রেতা এবং পণ্যের সংজ্ঞা)

The sale of goods act, 1930 has vested the definition of buyer, seller and goods. Party which acquires, or agrees to acquire, ownership (in case of goods), or benefit or usage (in case of services), in exchange for money or other consideration under a contract of sale. Also called purchaser.

1. **Buyer (ক্রেতা): "Buyer"** means a person who buys or agrees to buy goods. [Section 2(1)]

   A party that makes, offers or contracts to make a sale to an actual or potential buyer is called a seller.

2. **Seller (বিক্রেতা): "Seller"** means a person who sells or agrees to sell goods. [Section 2(13)]
3. **Goods (পণ্য):** According to Section 2(7) the term **'Goods'** means "every kind of movable property other than actionable claims and money and includes stock and shares , growing crops , and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"

   Moveable article like furniture, clothing etc. and shares and debentures are goods.

Types of goods (পণ্যের প্রকারভেদ): Existing goods, Future goods, and contingent goods.

1. **Existing goods (প্রচলিত পণ্য):** These are the goods which are owned or possessed by the seller at the time of sale. [Section 6(1)] The existing goods may be-
   a) **Specific goods (বিশেষ পণ্য):** Goods identified and agreed upon at the time of making of the contract of sale of goods.
   b) **Ascertained goods (নির্ধারিত পণ্য):** Goods identified subsequent to the formation of the contract of sale. The terms ascertained and specific, are commonly used for same kind of goods.
   c) **Unascertained or generic goods (অনির্নিত বা মানানসই পণ্য):** Goods not identified or agreed upon at the time of making of the contract of sale. They are the goods defined for description only.

Example: Mr. 'A' wants to buy a television set goes to a showroom where four sets of Walton television are displayed. He sees the performance of a particular set, which he agrees to buy. The set so agreed to be bought is a specific set. If after having bought one set he marks a particular set, the set so marked becomes ascertained. Till this all is done all sets are unascertained.

2. **Future goods (ভাবী পণ্য):** Future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. [Section 2(6)]

   Example: 'A' contract, on 1st January, to sell B 50 shares in Robi Axiata Ltd., to be delivered and paid for on the 1st March of the same year. At the time of making of the contract, A is not in possession of any shares. The contract is a contract for the sale of future goods.
3. **Contingent goods (অপ্রত্যাশিত পণ্য):** Goods, the acquisition of which by the seller, depends upon an uncertain contingency are called 'contingent goods'. They are also a type of future goods. [Section 6(2)]

   Example: 'A' agrees to sell 100 units of an article provided the ship which is bringing them, reaches the port safely. This is an agreement for the sale of contingent goods.

Finally we can say that buyer, seller, have the relationship as per law in order to transact goods among the parties. Under section 2 of Sale of goods act it defines properly.

?	**Define Buyer, Seller and goods.** **Or, Discuss different types of goods.**

3.3 Definition of Sales and Agreement to Sell
(বিক্রয় ও বিক্রি চুক্তির সংজ্ঞা)

It is a contract by which the ownership of movable goods is transferred from the seller to the buyer. The term 'contract of sale' is defined in Section 4(1) of the Sale of Goods Act as-

"A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price".

Example: Abdul Karim has a horse. Abdul Karim hands over the horse to Rahim for the amount of 20000Tk or Abdul Karim agrees to hand over the horse to Rahim within three (3) days. For both party this is an example of Contract for sale of goods.

The term "Contract of sale of goods' is a generic term and it includes: Sale and An agreement to sell.

"Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell". [Section 4(3)]

Sale (বিক্রয়): Where the seller transfers the ownership rights to the buyer immediately on making the contract, it is the contract of sale.

Agreement to Sell (বিক্রি চুক্তি): Where the ownership rights are to pass on some future date upon the fulfillment of certain conditions then it is called an agreement to sell.

Sale is transferring the ownership rights instantly whereas the agreement to sale transfer the ownership right at future date upon fulfill certain condition.

?	**Define Sale and Agreement to Sell.**

3.4 Deferrence Between a 'Sale and an 'Agreement to Sell'
(বিক্রয় ও বিক্রি চুক্তির মধ্যে পার্থক্য)

A 'Contract of Sale' is a type of contract whereby one party (seller) either transfers the ownership of goods or agrees to transfer it for money to the other party (buyer). A contract of sale can be a sale or an agreement to sell. In a contract of sale, when there is an actual sale of goods, it is known as Sale whereas if there is an intention to sell the goods, it is called an Agreement to sell. There are some differences between Sale and Agreement to sell. These are as follows:

Basis	Sale	Agreement to sell
Definition	Sale means the transfer of ownership in the goods from the seller to the buyer under a contract.	When the transfer of ownership is to take place at a future time, the contract is called agreement to sell.

Types of goods	A sale can only be in case of existing and specific goods only.	An agreement to sell is mostly in case of future and contingent goods (associated or dependent). Although it may refer to uncertain existing goods.
Transfer of ownership	Immediately.	At a future time.
Right to re-sell	In a sale the seller cannot re-sell the goods.	The buyer who takes the goods for consideration and without notice of the prior agreement gets him a good title. The original buyer can only sue the seller for damages.
Insolvency of buyer	In a sale if the buyer becomes insolvent before he pays for goods, the seller in the absence of the lien over the goods, must return them to the official receiver or assignee. He can only claim the rete able dividend for the price of the goods.	In an Agreement to Sell, If the buyer becomes insolvent and has not yet paid the price the seller is not bound to part with the goods until he is paid for.
Transfer of risk	In case of sale, the buyer has to bear the loss if the goods are subsequently damaged.	In case of agreement to sell, the seller has to bear all losses if the goods are subsequently damaged.
Remedies	In case of sale, the unpaid seller has several remedies, i.e. lien, stoppage in transit, resale etc.	In case of agreement to sell, the unpaid seller has only one remedy: filing a suit for damages against the buyer.
Nature of contract	'Sale' is an executed contract	'Agreement to sell' is an executory contract.

Under The Sale of Goods Act 1930, section 4 (3) deals with the Sale and Agreement to sell, where it has been clarified that the agreement to sell also come under sale. However, there is a distinction between these two terms which we discussed above.

?	**Differentiate between a 'Sale' and an 'agreement to sell'.**

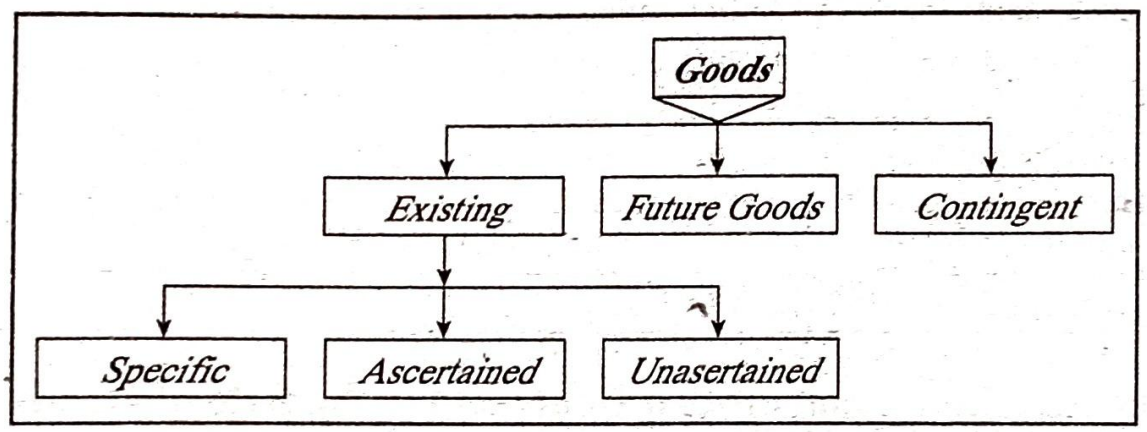
[BBA Professional 2010, 2012, 2013, 2019]

3.5 Classification of Goods
(পণ্যের শ্রেণিবিভাগ)

One of the most crucial terms to define is the goods that are to be included in the contract for sale. The Act defines the term "Goods" in its sec 2(7) as all types of movable property. The sec 2(7) of the Act goes as follows:

"Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale will be considered goods"

We say that goods are in a deliverable state when their condition is such that the buyer would, under the contract, be bound to take delivery of these goods. Goods may be further understood in the following subtypes:



1. **Existing Goods (বিদ্যমান জিনিসপত্র):** The goods that are referred to in the contract of sale are termed as existing goods if they are present (in existence) at the time of the contract. In sec 6 of the Act, the existing goods are those goods which are in the legal possession or are owned by the seller at the time of the formulation of the contract of sale. The existing goods are further of the following types:

   (a) **Specific Goods (নির্দিষ্ট জিনিস):** According to the sec 2(14) of the Act, these are those goods that are "identified and agreed upon" when the contract of sale is formed. For example, you want to sell your mobile phone online. You put an advertisement with its picture and information. A buyer agrees to the sale and a contract is formed. The mobile, in this case, is specific good.

   (b) **Ascertained Goods (জিনিসপত্র নির্ধারিত):** This is a type not defined by the law but by the judicial interpretation. This term is used for specific goods which have been selected from a larger set of goods. For example, you have 500 apples. Out of these 500 apples, you decide to sell 200 apples. To sell these 200 apples, you will need to separate them from the 500 (larger set). Thus you specify 200 apples from a larger group of unspecified apples. These 200 apples are now the ascertained goods.

(c) **Unascertained Goods (অনির্দিষ্ট পণ্য):** These are the goods that have not been specifically identified but have rather been left to be selected from a larger group. For example, from your 500 apples, you decide to sell 200 apples but you don't specify which ones you want to sell. A seller will have the liberty to choose any 200 apples from the lot. These are thus the unascertained goods.

2. **Future Goods (ভবিষ্যতের জিনিসপত্র):** In sec 2(6) of the Act, future goods have been defined as the goods that will either be manufactured or produced or acquired by the seller at the time the contract of sale is made. The contract for the sale of future goods will never have the actual sale in it, it will always be an agreement to sell.
For example, you have an apple orchard with apples in it. You agree to sell 1000 apples to a buyer after the apples ripe. This is a sale that has to occur in the future but the goods have been identified already and the agreement made. Such goods are known as future goods.
3. **Contingent Goods (ঘটনাসাপেক্ষ পণ্য):** Contingent goods are actually a subtype of future goods in the sense that in contingent goods the actual sale is to be done in the future. These goods are part of a sale contract that has some contingency clause in it. For example, if you sell your apples from your orchard when the trees are yet to produce apples, the apples are a contingent good. This sale is dependent on the condition that the trees are able to produce apples, which may not happen.

?	**Discuss the Classification of Goods.**

3.6 The Essential Elements of a Contract for the Sale of Goods (পণ্যবিক্রয় চুক্তির অপরিহার্য উপাদান)

"A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." [Section-(4) 1]. Important features for the sale of goods are as follows:

1. **Two Parties (দুটি পক্ষ):** The first essential is that there must be two distinct parties to a contract of sale, viz, a buyer and a seller, as a person cannot buy his own goods. However, there may be a contract of sale between one part-owner and another part-owner [Section-4(1)]. A partner may, therefore, buy the goods from the firm in which he is a partner and vice-versa.
2. **Mutual Consent (পারস্পরিক সম্মতি):** Just the presence of two parties is not sufficient. The parties must agree on the transfer of property.
3. **Transfer of Property (সম্পত্তির হস্তান্তর):** What a contract of sale stipulates is the transfer of property i.e. the ownership of the goods and not the possession of the goods.
4. **Goods (পণ্য):** Goods means every kind of movable property other than actionable claims and money. But it includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. [Section- 2(7)]. Since the price of the goods is expressed in terms of the money, money itself cannot be bought, and hence, money is not considered as goods.

5. **Price (মূল্য):** Under a contract of sale, property in the goods is transferred to the buyer for a price. Price is the money consideration for the goods.
6. **Formation of the contract of sale (বিক্রয় চুক্তি সম্পাদন):** The contract may provide for the immediate delivery of goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed. [Section 5(1)]
7. **Method of forming the contract (চুক্তি সম্পাদন পদ্ধতি):** The sale of goods act does not provide for a valid contract; mere offer and acceptance thereof forms a contract; it can be made either of the two and accepted by the other. Neither the payment nor delivery is necessary at the point of making the contract. It can either be verbal or in writing or both or understood through the conduct of parties involved. [Section-5(2)]
8. **Absolute or Conditional (পরম বা শর্তসাপেক্ষ):** An absolute contract of sale is technically called a 'sale'. Thus "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale" [Section- 4 (3)]. Thus a contract of sale is a generic term including 'Sale' as well as 'an agreement to sell.'
9. **The terms of Contract (চুক্তির শর্তাবলী):** The parties may agree upon any term concerning the time, place, and move of delivery. The terms may be of two types-essential and non-essential. Essential terms are called conditions, non-essential terms are called Warranties.

Thus "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale" [Sec 4 (3)]. Thus a contract of sale is a generic term including 'Sale' as well as 'an agreement to sell.' The elements are discussed here are strictly followed in both cases.

?	**Discuss the essential elements of a contract for the Sale of Goods.**

3.7 Definition of 'Price' and 'Earnest Money' ('মূল্য' এবং 'অগ্রিম মূল্য' এর সংজ্ঞা)

The sum or amount of money or its equivalent for which anything is bought, sold, or offered for sale.

"Price" means the money consideration for a sale of goods. [Section 2(10)]

✓ **Ascertainment of Price (মূল্য নির্ধারণ):** The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. [Section 9(1)]

Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [Section 9(2)]

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. Bu, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore. [Section 10(1)]
Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault. [Section 10 (2)]

✓ **Earnest Money (অগ্রিম মূল্য):** A deposit made to a seller showing the buyer's good faith in a transaction. Often used in real estate transactions, earnest money allows the buyer additional time when seeking financing. Earnest money is typically held jointly by the seller and buyer in a trust or escrow account.

An earnest money deposit shows the seller that a buyer is serious about purchasing a property. When the transaction is finalized, the funds are put toward the buyer's down payment. If the deal falls through, the buyer may not be able to reclaim the deposit.

?	**Define 'Price' and 'Earnest Money'.**

3.8 Definition of Higher Purchase Agreements
(ভাড়া ক্রয় চুক্তির সংজ্ঞা)

A method of buying goods through making installment payments over time. Under a hire purchase contract, the buyer is leasing the goods and does not obtain ownership until the full amount of the contract is paid.

Hire purchase is a way of buying goods on credit, which means that you are entering a credit contract. It's important to know what you are signing up for. This information should be included in a disclosure document that the lender must give you.

Thus, higher purchase basically provides an advantage of buyer and seller both in due course of time.

?	**Define 'Higher Purchase Agreements'.**

3.9 Definition of Conditions ,Warranties and Stipulation as to Time
(শর্ত, জামানত এবং সময় খেসারতের সংজ্ঞা)

A condition is a stipulation, which is essential to the main purpose of the contract. It goes to the root of the contract. Section 12 of the Sale of Goods Act, states that a stipulation in a contract of sale with reference to goods may be a condition or Warranty. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Section 12(1)]

1. **Condition (অবস্থা):** A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated. [Section 12(2)]

2. **Warranty (ওয়ারেন্টি):** A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Section 12(3)]
3. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Section 12(4)]
4. **Stipulation as to time (সময় হিসেবে শর্ত):** Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract. (Section 11)

Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact. (Section 63)

Finally, a stipulation in a contract of sale is a 'condition' or a 'warranty' depends in each case on the construction of the contract.

?	**Define Conditions, Warranties, and Stipulation as to time.**

3.10 When Conditions Can be Treated as a Warranty? (কখন শর্তকে জামানত হিসাবে গণ্য করা যায়)

A condition is a stipulation, which is essential to the main purpose of the contract. Condition can be treated as a warranty under the circumstances. As per section 13 of the Sale of Goods Act it has been enumerated-

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. [Section 13(1)]

Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect. [Section 13(2)]

Nothing in this section shall effect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise. [Section 13(3)]

Under the above mentioned circumstances the conditions can be treated as warranty. If a buyer, prevents the fulfillment of a condition contained in the contract, the conditions become invalid.

?	**In which circumstances Conditions can be treated as a warranty?**

3.11 Diffrence Between Condition and Warranty
(শর্ত এবং জামানতের মধ্যে পার্থক্য)

Millions of sale transactions are done daily, all around the world. The subject matter of a contract of sale is 'goods'. There are certain provisions which need to be fulfilled because it is demanded by the contract. These prerequisites can either be a condition and warranty. The condition is the fundamental stipulation of the contract of sale whereas Warranty is an additional stipulation. Although both of Condition and Warranty are rapidly used in business. There are significance different exist between condition and Warranty. These are follows:

Basis	Condition	Warranty
Definition	A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated	A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
Terms	Condition is a term which is essential to the main purpose of the contract.	Warranty is only a collateral term.
Conversion	A breach of condition may under certain circumstances, be treated as warranty.	But a warranty cannot become a condition.

At the time of agreeing to the contract of sale, both the buyer and seller puts some stipulations regarding payment, delivery, quality, quantity, etc. These stipulations can be either condition or warranty, which depends on the nature of the contract.

?	**Differentiate between Condition and Warranty.** [BBA (Prof.) 2009, 2010, 2013, 2017]

3.12 When and how Condition to be Treated as Warranty
(কবে এবং কীভাবে শর্তটি ওয়ারেন্টি হিসেবে বিবেচিত হবে)

According to Section 12(2) of the Sale of Goods Act, 1930, "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated". According to Section 13 of the said Act, a condition may be treated as a warranty under the following circumstances:

(1) Where a contract of sale is subject to any condition to the fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for relating the contract as repudiated.

(2) Where a contract of sale is not sever able and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Where the aggrieved party is contended with the damages the breach of condition may be treated as warranty as the breach of warranty.

?	**When and how Condition to be Treated as Warranty?**	**[BBA (Prof.) 2012]**

3.13 Difference Types of Implied Conditions in a Contract of The Sale of Goods (পণ্য বিক্রয় চুক্তির শর্তসমূহ)

Conditions & Warranties may be either express or implied. They are said to be express when at the will of the parties they are inserted in the contract and they are said to be implied when the law presumes their existence in the contract automatically though they have not been out into it in express words. Sections 14 to 17 of the Sale of Goods Act contain a list of conditions and warranties which are implied in a contract for the sale of goods, unless the circumstances of the contract are such as to show a different intention. The implied conditions and warranties are stated below:

1. **Condition as to Title** (নামকরণের শর্ত)**:** The first implied condition on part of the seller is that, in the case of a sale, he has the right to sell the goods at the time when the property is to pass.

   "An implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass." [Section 14(a)]

   Example: R bought a car from D and used it for 4 months. D had no title to the car and consequently R had to hand it over to the true owner. Held, R could recover the price paid.

2. **Condition in a sale by description** (বিক্রয়বিবণের শর্ত)**:** "Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description". (Section 15)

   Example: A want to sell his typewriter. He says to B, intending buyer who has not have seen the machine, that it is a brand new machine. B agrees to purchase it. On delivery B finds that the machine is old and repaired. B can repudiate the contract.

3. **Condition in a sale by sample** (নমুনার সাহায্যে বিক্রয়ের শর্ত)**:** When are goods are to be supplied according to a sample agreed upon the following conditions are implied

   A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. [Section 17(1)]

In the case of a contract for sale by sample there is an implied condition:

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. [Section 17(2)]

Example: Certain shoes were sold by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. *Held,* the buyer was entitled to the refund of price plus damages

4. **Condition in a sale by sample as well as by description (নমুনার সাহায্যে বিক্রয় এবং বিবরণের মাধ্যমে বিক্রয়ের শর্ত):** There is an implied condition that the bulk of the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description Or vice- versa, the buyer is entitled to reject the goods. The bulk of the goods must correspond with both.

5. **Implied conditions as to quality or fitness(মানের বা গুণের শর্ত):** Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:-

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not).

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. (Section 16)

Example: An order was placed for some Lorries to be used "for heavy traffic in a hilly area". The Lorries supplied were unfit and breakdown. There is a breach of condition as to fitness.

From the above discussion it is clear that different types of implied conditions are laid down by the sale of goods act that are raised in different situation.

?	**Discuss the different types of implied conditions in a contract of the Sale of Goods.**

3.14 Definition of Caveat Emptor and Exceptions on Application to Sale of Goods

(ক্রেতা সাবধান নীতির সংজ্ঞা এবং পণ্য বিক্রয় আবেদনের ব্যতিক্রমসমূহ)

The maxim of caveat emptor means, "let the buyer beware". According to the doctrine of caveat emptor it is the duty of the buyer to be careful while purchasing goods of his requirement and, in the absence of any enquiry from the buyer, the seller is not bound to disclose every defect in the goods of which he may be cognizant. The buyer must examine the goods thoroughly and must see that the goods that he buys must be suitable for the purpose of which he wants them.

If the goods turn out to be defective or do not serve his purpose, the buyer cannot hold the seller liable for the same, as there is no implied undertaking by the seller that he shall supply the goods, which suits the buyer's purpose. If, therefore, while making purchases of the goods the buyer depends upon his own skills and makes a bad choice, he must curse himself for his own mistake, in the absence of any misrepresentation or guarantee by the seller.

Example: A, a farmer, bought from B, a butcher, the carcass of a dead pig for consumption and left it hanging up, intending to return after completing other business and take it away. In his absence C, a farmer, on seeing and wishing to buy it, was referred to A and bought it of A. It turned out unsound and unfit for human consumption. It was held that no warranty of soundness was implied by law between farmers A and C.

This doctrine too has certain exceptions. Section 16 of the Sale of Goods act lays down that in a contract for the sale of goods there shall be no implied conditions as to quality or fitness for particular purpose. The exceptions are as follows:

1. The doctrine of caveat emptor is not applicable where the buyer relies upon the skill and judgment of the seller.

   Example: A buys a black yarn from B and finds that it has been damaged by white ants. The condition as to merchantable quality is broken and therefore, the doctrine of broken and therefore, the doctrine of caveat emptor does not hold good.

2. The doctrine of caveat emptor is not applicable where there is a sale of goods by description, there is an implied condition that the goods are fit for sale.

   Example: English wheat seeds, duly exhibited by a sample, are sold. The bulk corresponds to the sample but the seeds supplied are giant wheats and not English Wheats. There is a breach of condition as to description of goods. So the doctrine of caveat emptor is not applicable.

3. The doctrine of caveat emptor is not applicable where an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

   Example: A dealer sells a refrigerator to 'Z'. The refrigerator performs all other functions except making ice. This would amount to breach of an implied condition and thus the doctrine of caveat emptor will not work.

4. The doctrine of caveat emptor is not applicable where the seller is guilty of fraud.

   Example: A bought 2500 tins of preserved milk from Australia. The tins were labeled in such a way as to infringe the Nestlé's trademark. As a result, they were detained by the custom authorities. To get the clearance certificate from the customs, A had to remove the labels and sell them at a loss. Now A can hold the seller responsible for fraud and claim damages.

Thus, by legislation, the pendulum is moving in favor of the buyer. It have some exceptions when the buyer use his skill, knowledge, or such circumstances discussed above.

?	**Define Caveat Emptor and exceptions in application to sale of goods.** *[BBA Professional 13, 12, 11, 09, 08, 04]*

3.15 When Does Property Pass from the Seller to the Buyer? (কখন সম্পত্তি বিক্রেতার কাছ থেকে ক্রেতার নিকট পৌঁছায়?)

Transfer of property in the goods from the seller to the buyer is the main object of a contract of sale. Property in Goods means the ownership of goods, whereas "possession of goods" refers to the custody or control of goods.

Hence it is important to know the rules to determine when ownership of property passes from the seller to the buyer.

1. **Goods must be ascertained/certain (পণ্য সুনিশ্চিত / নিশ্চিতকরণ আবশ্যক):** Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until goods are ascertained. (Section 18)

   Example: If A agrees to sell to B one bag of sugar out of the lot of one hundred bags lying in his store; it is a sale of unascertained goods because it is not known which bag is to be delivered. As soon as a particular bag is separated from the lot for delivery, it becomes ascertained or specific goods.

2. **The intention of the Parties (পক্ষ সমুহের উদ্দেশ্য):** Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

   (1) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

   (2) Unless a different intention appears, the rules contained in section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. (Section 19)

3. **Specific goods (নির্ধারিত পণ্য):** Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment to the price or the time of delivery of the goods, or both, is postponed. (Section 20)

4. **Deliverable State (অর্পণযোগ্য রাজ্য):** Goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them. [Section 2(3)]

5. **When seller has something to do (যখন বিক্রয়কারী কিছু করার থাকে):** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. (Section 21)

6. **When goods are to be measured, tested, etc. (যখন পণ্য পরিমাপ ও পরীক্ষাকরা হয়):** Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (Section 22)

7. **Unconditional appropriation (নিঃশর্ত উপযোজন):** Unconditional appropriationmeans doing something which identifies and determines the actual goods to be delivered. Property passes when such conditional appropriation is made by one party with the consent of the other.

   Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made. [Section 23(1)]

8. **Delivery to the carrier (বহনকারী সংস্থাকে বন্টন):** The general rule is that when the seller delivers the goods to a carrier for being taken to the buyer, there is unconditional appropriation on his part and the property passes to the buyer. This rule have one exception- property does not pass if the seller reserves the right of disposal of the goods.

Reservation of right of disposal (বিক্রয় অধিকার সংরক্ষণ):

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped or are dispatched by railway and are by the bill of lading or by railway receipt deliverable to the order of the seller or his agent the seller is prima facie deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading or railway receipt to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or railway receipt if he does not honour the bill of exchange and if he wrongfully retains the bill of lading or railway receipt the property in the goods does not pass to him. (Section 25)

Example: A sends certain goods by lorry to B and instructs the lorry driver not to be deliver the goods until the price is paid by B to the lorry driver. The property passes only when the price is paid.

8. **Goods sent on approval or "on sale or return" (অনুমোদনের জন্য পণ্য প্রেড়ন বা "বিক্রয় অথবা ফেরত"):** When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. (Section 24)

Example: A sends certain books to B on approval. B does not return them or ask the seller to take them away, for six months. He is deemed to have approved the sale and must pay the price.

Thus, we can say that the abovementioned rule is playing a vital role to pass the ownership from buyer to seller. Buyers and seller relationship is maintained strictly for averting the future risk which might increase by violating or unfollowing the rules.

?	What are the rules, which determine when ownership of property passes from the seller to the buyer? Or, When does title in the property in goods sold pass from the seller to the buyer? *[BBA Professional 2016, 2019]*

3.16 Transfer of Risk under The Sale of Goods Act
(পণ্য বিক্রয় আইনের অধীনে ঝুঁকি স্থানান্তর)

The general rule prevalent in India is that the risk of damage or loss of movable property lies with the owner of the good. The Latin term 'res perit domino' expresses that the thing is lost to the owner of the property. This principle is applicable in the case of sale of movable property.

Section 26 of the Sale of Goods Act, 1930 states the goods are the owner's risk if the property in them has not been transferred to the buyer. But if the property has been transferred to the buyer then the goods are buyer's risk. This provision is applicable if no specific provision has been signed by the parties to the contract in their contract regarding this. This rule is applicable irrespective of the fact that delivery has been made or not.

It means that the risk is associated with ownership and not with mere possession of the property. To decide whether the risk has been passed or not, we first need to find whether the property in goods i.e. the ownership has passed or not.

The passing of risk means the transfer of the liability for damage or loss of the property from the seller of the immovable property to the buyer. The risk in the property prima facie passes with the property, but if the parties to the contract agree to pass the risk on the property at some other level of transaction, then that is also possible, depending upon the terms of their contract. It is also possible that that the title, risk, and possession of the property pass independent of each other from the seller to the buyer in a sale's transaction.

Exceptions: There are two exceptions to the general law that the risk passes with the transfer of property in the goods. These are:

- If the delivery has been delayed due to the fault of either party, then the liability of damage will lie on the party at fault. If the seller has failed to deliver the goods as agreed by the parties and the goods are damaged or lost due to that, then the seller will bear the cost. If the buyer has failed to take delivery of goods despite many reminders by the seller, then the buyer will bear the cost.

  In Demby Hamilton & Co. Ltd. v. Barden, the sellers agreed to supply 30 tons of apple juice by samples. The seller crushed 30 tons of apples at once to ensure that they are according to the samples and filled them in the casks. After some installments had been delivered, the buyer refused to take further deliveries. The apple juice became putrid. It was held that the property in the goods was still with the sellers, but the loss had to be borne by the buyer.

- Irrespective of the fact that the property in the goods has been transferred or not, the possessor of the good has same rights and duties as bailee of the goods. If the damage to the property occurs due to the negligence of the possessor of the goods, as a bailee, he will be liable to bear the damage or loss of the goods.

? Describe the Transfer of Risk under The Sale of Goods Act.

3.17 Transfer of Title by Non-Owner / Sale by Non-Owners
(মালিক নয় এমন ব্যক্তির মাধ্যমে হস্তান্তর/বিক্রয়)

The general rule of law is that "no one can give that which he has not got". Only an owner of the goods can transfer a good title. This rule is expressed by the Latin maxim "Nemo quod qui non habet". No one can convey to a transferee a better title than he himself has.

Example: A, finds a ring of B and sells it to a third person who purchases it for a value & in good faith. The true owner i.e. B can recover from that person, for A having no title could pass none the better.

The above rules, there are certain exceptions:

1. **Sale by a Person not the Owner or Title by Estoppels (কোনো ব্যক্তির দ্বারা বিক্রয় নয় এস্টোপেলস দ্বারা মালিক বা শিরোনাম):** Where the true owner by his conduct or by an act of omission, leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. The buyer in such a case gets a better title than that of the seller.

   Example: A tells B within the hearing of C that he is the owner of certain goods which in fact belong to C. After sometime B buys those goods from A. The title of B will be better than that of A and C will be precluded from disputing B title to the goods.

2. **Sale by a Mercantile Agent (মার্কেন্টাইল এজেন্ট দ্বারা বিক্রয়):** "Mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. [Section 2(9)]

   The provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title of the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. (Section 27)

   The buyer of the goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

   a) The agent should be in possession of the goods or documents of the title to the goods with the consent of the owner.
   b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
   c) The buyer should act in good faith
   d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

   Example: F, the owner of a car delivered it to H a mercantile agent for sale at not less than Tk. 575. H sold the car for Tk. 145 to K who bought it in good faith and without notice of any fraud. H misappropriated the money. F sued to recover the car from K. Held, as H was in possession of the car with F's consent for the purpose of sale, K obtained a good title to the car.

3. **Sale by one of several Joint Owners (বেশ কয়েকটি যৌথ মালিকদের মধ্যে একটির বিক্রয়):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell. (Section 28)

4. **Sale by a person in possession under a void able contract (অকার্যকর সক্ষম চুক্তির আওতায় থাকা কোনো ব্যক্তির বিক্রয়):** 29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. (Section 29)

   Example: A purchases a piano from B by fraud. A has a voidable title to the goods. Before B reincides the contract, A sells the piano to C, who buys in good faith and in ignorance of the fraud. C gets a good title.

5. **Sale by seller in possession of goods after Sale (বিক্রয় পরে পণ্য দখল বিক্রয় দ্বারা বিক্রয়):** Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. [Section 30(1)]

   Example: A sells certain goods to B and promises to deliver the goods the next day. Before delivery A sells & delivers the goods to C who buys the goods in good faith and without prior knowledge of sale to B. C gets a good title to the goods not withstanding that the property had, before he purchased, passed to B. B's only remedy in this case is against A.

6. **Sale by an unpaid seller (একটি বেতনের বিক্রয়কারী দ্বারা বিক্রয়):** As per the section 45 of the Sale of goods act an unpaid seller means:

   (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act:

   (a) when the whole of the price has not been paid or tendered;

   (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

   (2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price. (Section 45)

7. **Sale under the Contract Act (:** The following sections are too relevant to the exception of contract act, 1872.

(a) A Pawnee may sell the goods of pawnor if the latter makes a default of his dues. The purchaser under such a sale gets a good title. (Section-176, The Contract, 1872)

(b) A finder of goods can sell the goods under certain circumstances. The purchaser gets a good title. (Section 169, The Contract, 1872)

So, in the above mention situation a non- owner can act like an owner, though he have no relation with the property or title.

?	Discuss the exception, to the rule that 'no one can give better title to the goods than he has himself. Or, The general law is that no seller of goods can give the buyer of goods a better title to the goods than he himself has. Explain. Are there any exceptions to the above general law? If so, what are they? *[BBA Professional 2013,11,09,07]*

3.18 Unpaid Seller
(বিনা পারিশ্রমিকে বিক্রেতা)

Seller: A person who sells the goods or agrees to sell the goods is called seller.

Unpaid: It means payment is not made or without payment.

In simple words, "Unpaid seller" means a person who has sold the goods for a price but price has not been paid to him.

Sales act defines the "unpaid seller" in the following words:

Unpaid Seller Is A Person:

(i) To whom the whole price has not been paid or tendered.

(ii) And where a bill of exchange or other negotiable instruments has been accepted by him as a condition on which it was received has not been fulfilled by reason of dishonor of the instrument or otherwise. It is also declares that any person who is in the position of a seller like agent is also considered seller.

?	**Describe the Unpaid Seller.**

3.19 Rights of Unpaid Seller against Buyer
(ক্রেতার বিরুদ্ধে অবৈতনিক বিক্রয়কারীর অধিকার)

When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

1. **Suit for Price (স্যুটের দাম):** Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due.

But say the sales contract says that the price will be paid at a later date irrespective of the delivery of goods. And on such a day the if the buyer refuses to pay, the unpaid seller may sue for the price of these goods. The actual delivery of the goods is not of importance according to the law.

2. **Suit for Damages for Non-Acceptance (অগ্রহণযোগ্যতার জন্য ক্ষতির জন্য মামলা):** If the buyer wrongfully refuses or neglects to accept and pay the unpaid seller, the seller can sue the buyer for damages caused due to his non-acceptance of goods. Since the buyer refused to buy the goods without any just cause, the seller may face certain damages.

   The measure of such damages is decided by the Section 73 of the Indian Contract Act 1872, which deals with damages and penalties. Take for example the case of seller A. He agrees to sell to B 100 liters of milk for a decided price. On the day, B refuses to accept the goods for no justifiable reason. A is not able to find another buyer and the milk goes bad. In such a case, A can sue B for damages.

3. **Repudiation of Contract before Due Date (নির্ধারিত তারিখের আগে চুক্তির প্রত্যাখ্যান):** If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Indian Contract Act and is known as Anticipatory Breach of Contract.

4. **Suit for Interest (সুদের মামলা):** If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due.

   But if the parties do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

?	**Discuss the Rights of Unpaid Seller against Buyer.**

3.20 Remedies of Buyer against the Seller
(বিক্রেতার বিরুদ্ধে ক্রেতার প্রতিকার)

Just as the seller can rescind the contract, then so can the seller. When the seller breaches the contract the buyer also has certain remedies against the seller. Let us take a look at some remedies that the Sales Act prescribes for the buyer:

1. **Damages of Non-Delivery (অ-সরবরাহের ক্ষয়ক্ষতি):** If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

   Let's take for example A whose agrees to sell to B 10 pair of shoes for 1000/- each. B was going to sell the same shoes to C for 1100/- a pair. A neglects to deliver the goods to B. Now, B can sue A for non-delivery. He can sue for the amount of 100/- per pair, i.e. 1000/- (the difference between B's cost price and sale price)

2. **Suit for Specific Performance (নির্দিষ্ট পারফরম্যান্সের মামলা):** If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

   Example: There was a contract between A and B, that A will sell to B a very expensive painting on a specific date. On the said day A refuses to sell. B can approach the court, who orders A to sell the painting to B at the ascertained price.

3. **Suit for Breach of Warranty (ওয়ারেন্টি লঙ্ঘনের মামলা):** When the seller breaches the warranty of the goods, the buyer cannot simply reject the goods on such basis. The buyer has two options in such a case,
   - Set up against the buyer the said breach of warranty in the extinction of the price
   - or sue the seller for breach of warranty

4. **Repudiation of Contract (চুক্তির প্রত্যাখ্যান):** If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

5. **Sue for Interest (আগ্রহের জন্য মামলা):** The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recover interest or special damages due to him by the contract. And if there is no specific clause in the contract, the court can come to the rescue of the affected party.

?	**Discuss the Remedies of Buyer against the Seller.**

3.21 Definition of Delivery (অর্পণের সংজ্ঞা)

It is the duty of the seller to deliver the goods & of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. "It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale". (Section 31) According to Fredrick Pollock "Delivery as Voluntary dispossession in favor of another".

"Delivery" means voluntary transfer of possession from one person to another. [Section 2(2)]

✓ **Mode of Delivery(অর্পণের ধরণ):** Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf. (Section 33)

Delivery of goods may, therefore be- Actual Delivery, Symbolic Delivery, Constructive Delivery.

1. **Actual Delivery(প্রকৃত বিতরণ):** It is a delivery where goods are handed over to the buyer or his authorized agent. It means goods are physically put in possession of the buyer.

2. **Symbolic Delivery (নাম মাত্র অর্পণ):** When goods are not physically delivered to the buyer but some symbol of the real possession or control over goods is handed over to buyer.

   Example: Delivery of key of the car.

3. **Constructive Delivery (গঠনমূলক অর্পণ):** When a change in the possession of the goods without any change in the actual and visible custody.

Example: Delivery of the bill of lading with which goods may be obtained.

However, delivery can be made to some other person or authorized representative to buyer especially when buyer gives directions for making of such delivery. Delivery can be made immediately or can be made at some future date or can be made according to some condition, which is to be fulfilled.

?	**Define Delivery. Discuss different mode of Delivery.**

3.22 The Rules Regarding Delivery
(অর্পণ সংক্রান্ত বিধিমালা)

The sale of goods Act lays down the following rules regarding delivery and other matters concerning the performance of the contract of sale. The rules are crucial to conduct the deliver job in a legal way.

The rules are discussed below:

1. **Possession of Buyer (বিক্রেতার স্বত্ব):** Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf. (Section 33)
2. **Effect of the Delivery (বিতরণে প্রভাব):** A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder. (Section 34)
3. **Application for delivery (বিতরণের আবেদন):** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. (Section 35)
4. **Place of Delivery (বিতরণের স্থান):** Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or if not then in existence, at the place at which they are manufactured or produced. [Section 36(1)]

5. **Time of Delivery (বিতরণের সময়):** (1) Where under the contract of the sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time. [Section 36(2)]

(2) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact. [Section 36(4)]

6. **Possession of a Third Person (তৃতীয় ব্যক্তির অধিগ্রহণ):** Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. [Section 36(3)]

7. **Expenses of Delivery (বিতরণের ব্যয়):** Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller. [Section 36(5)]

8. **Delivery of the Wrong Quantity (ভুল পরিমাণে বিতরণ):** Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Section 37(1)]

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Section 37(2)]

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole. [Section 37(3)]

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Section 37(4)]

9. **Installment Delivery (কিস্তি ভিত্তিতে বিতরণ):** (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments. [Section 38(1)]

(2) Where there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated. [Section 38(2)]

10. **Delivery to the carrier or wharfinger (বহনকারীর নিকট বিতরণ):** (1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission

(ii) Where the managing agent is a body corporate, any director or manager of the body corporate;

(iii) Where the secretary is a body corporate; Provided that except for the purpose of sections 331, 332, and 333, the form "officer" shall not include an auditor.;

(p) "**prescribed**" means as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the Supreme Court and, as respect the other provisions of this Act, prescribed by the Government;

(q) "**private company**" means a company which by its articles--

(i) restricts the right to transfer its shares, if any;

(ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any;

(iii) limits the number of its members to fifty not including persons who are in its employment;

Provided that where two or more persons hold one or more shares in a company jointly, the shall, for the purposes of this definition be treated as a single member;

(r) "**public company**" means a company incorporated under this Act or under any law at any time in force before the commencement of this Act and which is not a private company;

(s) "**Registrar**" means a Registrar or any other officer, by whatever designation, performing under this Act the duty of registration of companies;

(f) "**Schedule**" means a schedule to this act;

(u) "**secretary**" means any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties, and

(v) "**share**" means a share in the capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

2. For the purposes of this Act, a company shall subject to the provisions sub-section (4), be deemed to be a subsidiary of another, if--

(a) That other contracts the composition of Board of Directors of the first mentioned company.

(b) The first mentioned company, being an existing company, has before the commencement of this Act, issued preference shares the holders of which have the same voting right in all respects as the holders of equity shares and that other company exercises or controls more than half of the total voting power of the first mentioned company; or

(c) The first mentioned company is not a subsidiary within the meaning of clause (b), but that other company holds more than half in nominal value of its equity share capital; or

(d) The first mentioned company is a subsidiary of a third company with is that other's subsidiary.

3. For the purposes of sub-section (2), the composition of a company's Board of Directors shall be deemed to be controlled

by another company if, that other company, by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directors, and for the purposes of this sub-section that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say:

(a) That power of appointment cannot be exercised except in favour of an individual,

(b) That an individuals appointment thereto follows necessarily from his appointment as director, managing agent, secretary or manager of or to any other office of employment in, that other company; or

(c) That the directorship is held by an individual nominated by that other company or a subsidiary thereof.

4. In determining whether one company is a subsidiary of another the following conditions shall be applicable namely:

(a) Any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it.

(b) Subject to the provisions of clauses (c) and (d) any shares held or power exercisable shall be deemed to be the shares held or power exercisable by that other company, if--

(i) The shares are held or the power is exercisable by a person as a nominee and on behalf of that other company, but this clause shall not apply to the holding of such shares or to the exercise of such powers by such person where that other company is concerned in a fiduciary capacity.

(ii) The shares are held or the power is exercisable by a subsidiary of that other company or by a nominee of such subsidiary, but this clause shall not apply to the holding of such shares or to the exercise of such powers by the subsidiary or by its nominee where the subsidiary is concerned in a fiduciary capacity;

(c) Any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall disregarded;

(d) If any shares are held or power is exercisable, not being held of exercisable as mentioned in clause (c),:

(i) By that other company or by its subsidiary or by a nominee of that other or its subsidiary as the case may be, and

(ii) The ordinary business of that other company or as the case may be of its subsidiary includes the lending of money and such shares are held or the power is exercisable by way of security of the loan [then such power shall not be treated as being held or exercisable by such company or its nominee.]

5. For the purposes of this Act' a company shall be deemed to be the holding company of another if, and only if, that other is its subsidiary.

? Describe the Key Definitions and Concepts.

4.2 Meaning and Definition of Company
(কোম্পানির অর্থ ও সংজ্ঞা)

The word 'company' is a derivative of the Latin word 'companis'. 'Companis' isin fact, made up of two words: 'com' and 'panis'. 'Com' means 'together' and 'panis' means 'bread'. Originally, the word 'company' means a group of persons associated for any common object such as business, charity, sports etc. It is an association of persons. Different authorities on the subject have defined a 'company' as under:

1. **Under Sec 2 (1) (d) The Bangladesh Company Act, 1994,** "Company means a company formed and registered under this Act or an existing company."
2. **According to Prof L.H. Haney,** "A Company is an artificial person created by law having a separate entity with a perpetual succession and a common seal."
3. **According to Dr. W.R. Spriegal,** "The Corporation (Company) is a creature of state and possesses an entity distinct from the persons owing its stock or other securities."
4. **According to Lord Justice Lindley,** "By a company is meant an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising there from."
5. **According to Justice James,** "A company is an association of persons united for a common purpose." Justice Marshall of USA, "A Joint Stock Company is an artificial being, invisible, intangible and existing only in contemplation of law."
6. **According to L. H. Haney,** "A company is an incorporated association which is an artificial person created by law, having a separate entity with a perpetual succession and a common seal."

To conclude, a company may be defined as an incorporated association, an artificial legal person, having an independent legal entity, with a perpetual succession, a common seal, and carrying limited liability.

? What is a company or joint stock company? [NU 2019]

4.3 Characteristics of a Company (কোম্পানির বৈশিষ্ট্য)

A company as an entity has many distinct features which together make it a unique organization. The essential characteristics of a company are following:

1. **Registration(নিবন্ধন):** A company comes into existence only alter registration under the Companies Act*[Sec. 24(1)]*. But a Statutory Corporation is formed and commence business as notified or stated m the Act and as passed in the Legislature. In case of partnership registration is not compulsory.
2. **Voluntary Association(স্বেচ্ছা সমিতি):** A company is an association many persons on a voluntary basis. Therefore a company, formed by the choice and consent of the members.
3. **Legal personality (আইনগত ব্যক্তিত্ব):** A company is regarded by a single person. It has a legal personality. This rule applies even in the case of "One-man Company."*[Solomon Vs. Solomon & Co. Ltd. (1897) A.C.22]*
4. **Contractual capacity (চুক্তিভিত্তিক ক্ষমতা):** A shareholder of a company, in its individual capacity, cannot bind the company in a way. The shareholder of a company can enter into any contract with the company and can be an employee of the company.
5. **Management (পরিচালনা):** A company is managed by the board of Directors, whole time Directors, Managing Director or Manager. These persons are selected in the manner provided by the Act and the Articles of Association of the company. A shareholder, as such, cannot participate in the management.
6. **Capital (পুঁজি):** A company must have a capital, otherwise it cannot work.
7. **Permanent existence (চিরস্থায়ী অস্তিত্ব):** The company has Perpetual' succession. The death or insolvency of a shareholder does not affect its existence. A company comes into end only when it is liquidated according to provisions of the Companies Act.
8. **Registered Office (নিবন্ধিত দপ্তর):** A company must have a registered office.
9. **Common Seal (সাধারণ সীলমোহর):** A company must have a Common Seal.
10. **Limited Liability (সীমিত দায়):** The liabilities of shareholder of a company are usually limited. The creditors of a company are not creditors of individual shareholders and a decree obtained against a company cannot be executed against any shareholders. It can only be executed against the assets of the company.
11. **Transferability (হস্তান্তরযোগ্যতা):** The shareholder of a company can transfer its share and ordinarily the transferee becomes, a member of the company.
12. **Statutory Obligations (বিধিবদ্ধ বাধ্যবাধকতা):** A company is required to comply with various statutory obligations regarding management, e.g., filing balance sheets, maintaining proper account books and registers etc.

13. **Not a citizen (নাগরিক নয়):** A company is an artificial person, not a natural person. Therefore a company is not a Citizen, although it may have a Domicile. *[STC of India Vs. Bishwanath Tea Co. Ltd.]*
14. **Residence (আবাস):** A company has a residence (for taxation and other purpose). A company does not possess any fundamental rights. *[TATA Engineering and Locomotive Co. Ltd. Vs. State of Bihar, AIR 1965 Supreme Court 1965]*
15. **No fundamental rights (মৌলিক অধিকার বিহীন):** Though a company has no fundamental rights, it can challenge a law as void if the law happens to violate fundamental rights of citizens. In order to succeed the company must prove that the impugned law is expropriatory of a citizen's property.
16. **Social Objective (সামাজিক উদ্দেশ্য):** The present view as regard the legal nature of Company Law is that the Company is a social institution having duties and responsibilities toward the community, its workers, the national economy and progress.
17. **Centrally administrated (কেন্দ্রীয়ভাবে পরিচালিত):** The administration of Company Law is entrusted to the Government.

Thus the distinctive features of the company form of organization are discussed here.

?	**Write down the essential features of a company.**	***(BBA 2006)***

4.4 Advantages of Joint Stock Company
(যৌথ মুলধনি কোম্পানির উপকারিতা)

The birth and development of the joint stock company was the result of an attempt to overcome the drawbacks or shortcoming of sole proprietorship or partnership. The following are the main advantages of a joint stock company:

1. **Expansion of Business(ব্যবসা-বাণিজ্য প্রসার):** A joint stock company sells the shares bonds and debentures on large scale. So it can collect a large capital and can expand its business.
2. **Limited Liability(সীমিত দায়):** In case of loss the liability of the shareholders is limited to the amount, they have invested. So their private property remains safe in case of loss.
3. **Transfer of Shares (শেয়ার হস্তান্তর):** The share of the public company can be easily transferred or disposed of. There is no restriction on it.
4. **Larger Capital(বৃহত্তর পুঁজি):** There is no problem of capital shortage in this business organization. Because there is no limit for maximum number of members. So it collects the capital from all the people rich and poor.
5. **Durability(স্থায়িত্ব):** This type of organization is more stable and durable because the life of company is not affected by the death or insolvency of any member.
6. **Economics of Large Scale (বৃহত্তর অর্থনীতি):** The Company increases the size of business and enjoys all the economies on large scale.

7. **Increase in saving and Investment (সঞ্চয় এবং বিনিয়োগ বৃদ্ধি):** The shares are in large number but their value is small. So rich and poor both can purchase the shares. To earn maximum profit people save more money to invest in the joint stock company.
8. **Better Management (উন্নততর ব্যবস্থাপনা):** A joint stock company is administrated by the elected directors. These are generally experienced and qualified people, so efficiency of the company improves.
9. **Experts Services (বিশেষজ্ঞদের সেবা):** Due to sound financial resources a joint stock company may hire the services of qualified and technical experts.
10. **Provide Employment (কর্মসংস্থান প্রদান):** Joint stock company are paying very effective role in reducing the unemployment in the country.
11. **Flexibility (নমনীয়তা):** There is flexibility in this business. New changes can be made easily with the changing circumstances.
12. **Public Confidence (জনগণের আস্থা):** An experience auditor is appointed to audit the income and expenditure of the company. So the chances of fraud if are less in the joint stock company. So this type of business can easily win the public confidence.
13. **Higher Profits (উচ্চ মুনাফা):** Due to the availability of large capital and technical skill cost of production reduces. It increases the rate of profit.
14. **Large Scale Operation (বৃহৎ কর্মক্ষেত্র):** The capacity of the corporate organizations to raise the funds is comparatively high which provide capital for large scale operations. Hence opens the scope for expansion.
15. **Social Development (সামাজিক উন্নয়ন):** It offers employment to a large number of people. It facilitates promotion of various ancillary industries. It also donates money for education, community service.
16. **Research and Development (গবেষণা ও উন্নয়ন):** It invests a lot of money on research and development for improved production process, improving quality of product, designing and innovating new products etc.

?	**What are the advantages of Joint Stock Companies?**

4.5 Disadvantages of Joint Stock Company
(যৌথ মূলধনী কোম্পানির অপকারিতা)

While there are advantages of a joint stock company which have been discussed in the preceding. There are also some disadvantages. These are as follows:

1. **Complicated process (জটিল প্রক্রিয়া):** The formation of Joint Stock Company is a very difficult process. Many legal formalities are observed by the founders. A lot of time and money is wasted, it is disadvantage of Joint Stock Company.

2. **Difference of opinion (মতপার্থক্য):** Sometimes difference of opinion takes place on some important issue among the directors and officers of the company. It becomes the cause of loss.

3. **Lack of responsibility (দায়িত্বশীলতার অভাব):** There is lack of personal interest and responsibility in the business of a company. In case of any mistake everybody tries to transfer its responsibility to other person. It makes the business inefficient.

4. **Nepotism (আত্মীয়পোষণ):** General Director of company employ their incapable relatives and friends on key jobs. Due to this cost of production increases and company suffer a loss.

5. **Centralization of powers (ক্ষমতার কেন্দ্রীকরণ):** All the powers of the joint stock company are in few hands. Because an ordinary shareholder cannot take keen interest in the company affairs. So directors take undue benefits from the company.

6. **Growth of monopoly. (একচেটিয়া ক্ষমতা বৃদ্ধি):** Joint Stock Company wants a monopolistic control over the market. While monopoly is always against the public interest.

7. **Lack of secrecy (গোপনীয়তার অভাব):** A company cannot maintain these secrecy because it submits the various reports to registrar. Sometime it affects the goodwill of the firm badly.

8. **Corruption (দুর্নীতি):** Sometimes director of the company do not show the true picture of the company to the public and they deceive them.

9. **Employer and workers relationship (নিয়োগকর্তা এবং শ্রমিকের সম্পর্ক):** A joint stock company expands the business on large scale. There are large number of workers, so there is no direct link between the workers and employer. It becomes the cause of strike and lockup.

10. **Lack of team spirit (টিম স্পিরিটের অভাব):** In the company business everyone keeps in view his own interest. When there is a risk of loss shareholders begin to sell their shares.

11. **Lack of freedom (স্বাধীনতার অভাব):** This type of business organization cannot performs its function freely. Because it has to submit various reports to Govt. So there is much interference of the Govt.

12. **Double taxes (ডাবল কর):** A joint stock company has to pay double taxes on whole profit. Secondly every shareholder will pay tax on his individual income.

13. **Increase in speculation (ফটকা বৃদ্ধি):** The shares are transferable and the prices of the shares fluctuate in the stock exchange due to various factors. It increases the speculation which is harmful for the public.

?	**What are the disadvantages of Joint Stock Companies?**

4.6 Types of Companies (কোম্পানির প্রকারভেদ)

There are different types of company, which can be classified on the basis of formation, liability, ownership, domicile and control.

A. Types of Companies on the Basis of Formation or Incorporation

1. **Chartered Companies (চার্টার্ড কোম্পানি):** Companies which are incorporated under special charter or proclamation issued by the head of state, are known as chartered companies. The Bank Of England, The East India Company, Chartered Bank etc. are the examples of chartered companies.
2. **Statutory Companies (বিধিবদ্ধ কোম্পানি):** Companies which are formed or incorporated by a special act of parliament, are known as statutory companies. The activities of such companies are governed by their respective acts and are not required to have any Memorandum or Articles of Association.*[Act.94, Sec. 2(2)]*
3. **Registered Companies (নিবন্ধন কোম্পানি):** Registered companies are those companies which are formed by registration under the Company Act. Registered companies may be divided into two categories.
   a) **Private Company (প্রাইভেট কোম্পানি):** A company is said to be a private company which by its Memorandum of Association restricts the right of its members to transfer shares, limits the number of its members and does not invite the public to subscribe its shares or debentures.*[Sec. 2(1-q)]*
   b) **Public Company (পাবলিক কোম্পানি):** A company, which is not private, is known as public company. It needs minimum seven persons for its registration and maximum to the limit of its registered capital. There is no restriction on issue or transfer of its shares and this type of company can invite the public to purchase its shares and debentures.*[Sec. 2(1-r)]*

B. Types of Companies On The Basis Of Liability (দায়ের ভিত্তিতে কোম্পানির প্রকারভেদ): Registered companies are divided into two types, namely, companies having limited liability and companies having unlimited liability.

1. **Companies Having Limited Liability (সীমিত দায় কোম্পানি):** This liability can be limited in two ways:
   a) **Liability Limited By Shares (শেয়ার দ্বারা সীমিত দায়):** These are those companies in which the capital is divided into shares and liability of members (shareholders) is limited to the extent of face value of shares held by them. This is the most popular class of company.
   b) **Liability Limited By Guarantee (প্রতিশ্রুতি দ্বারা সীমিত দায়):** These are such companies where shareholders promise to pay a fixed amount to meet the liabilities of the company in the case of liquidation.

2. **Companies Having Unlimited Liability (অসীম দায় কোম্পানি):** A company not having any limit on the liability of its members as in the case of a partnership or sole trading concern is an unlimited company. If such a company goes into liquidation, the members can be called upon to pay an unlimited amount even from their private properties to meet the claim of the creditors of the company.

C. **Types Of Companies On The Basis Of Ownership (মালিকানার ভিত্তিতে কোম্পানির প্রকারভেদ)**

1. **Government Companies (সরকারি কোম্পানি):** A government company is a company in which at least 51% of the paid up capital has been subscribed by the government.
2. **Non-government Companies (বেসরকারি কোম্পানি):** If the government does not subscribe a minimum 51% of the paid up capital, the company will be a non-government company.

D. **Types Of Companies On The Basis Of Domicile (অবস্থানের ভিত্তিতে কোম্পানির প্রকারভেদ)**

1. **National Companies (জাতীয় কোম্পানি):** A company, which is registered in a country by restricting its area of operations within the national boundary of such country is known as a national company.
2. **Foreign Companies (বিদেশি কোম্পানি):** A foreign company is a company having business in a country, but not registered in that country.
3. **Multinational Companies (বহুজাতিক কোম্পানি):** Multinational companies have their presence and business in two or more countries. In other words, a company, which carries on business activities in more than one country, is known as multinational company.

E. **Types Of Companies On The Basis Of Control (নিয়ন্ত্রণের ভিত্তিতে কোম্পানির প্রকারভেদ)**

1. **Holding Companies (হোল্ডিং কোম্পানি):** A holding company is a company, which holds all, or majority of the share capital in one or more companies so as to have a controlling interest in such companies.
2. **Subsidiary Company (ঐচ্ছিক কোম্পানি):** A company, which operates its business under the control of another company (i.e holding company), is known as a subsidiary company.

?	**Explain different types of companies in brief.**

4.7 Difference Between a Private and a Public Company (বেসরকারী এবং সরকারী কোম্পানীর মধ্যে পার্থক্য)

It is an artificial person having a separate legal entity, i.e. its identity is distinct from its members (who subscribe the memorandum of association of the company and whose name has been entered in the register of members) with limited liability. The company has a common seal, perpetual succession and it can sue and be sued in its own name. There are some companies registered under this act, some of them are public limited company while others are a private limited company. The difference between public and private company is given as under:

Basis	Private Company	Public Company
1. Number of Members *[Sec. 5]*	The minimum number of members is 2, and the maximum, excluding the present and past employees, is 50.	The minimum number of members is 7 and the maximum can be as many as the number of shares of the company.
2. Minimum Paid-up Capital *[Sec.148(13)]*	It is essential to have Tk. 1 lakh paid-up capital for a private company to be incorporated.	It is essential it have minimum Tk. 5 lakh paid-up capital.
3. Invitation to the Public	A private company cannot invite the public to invest in its shares. It needs to arrange the required capital from its own sources.	A public company arranges the total capital requirement from the public. To do that, it invites the public to invest in its shares and debentures.
4. Allotment of shares	A private company can allot shares immediately on the receipt of the incorporation certificate.	A public company cannot allot its shares to the public unless it receives minimum subscription.
5. Further issue of Share Capital	This is not essential for a private company to offer new shares firstly to existing share holder.	After the issue of new share capital, the public company has to announce the proposal of the new shares to present share-holders.
6. Commencement of Business *[Sec.150(6)]*	A private company can commence its business immediately on the receipt of the certificate of incorporation.	A public company cannot commence its business as long as it does not get an official letter of commencement to do so.
7. Issue of Prospectus	A private company cannot issue a prospectus or a statement in lieu of a prospectus.	It is mandatory for a public company to issue a prospectus. In the absence of a prospectus, it is necessary to issue a statement in lieu of a prospectus.
8 Statutory Meeting	It is not necessary for a private company to call a statutory meeting.	A public company is obligated by law to call a statutory meeting within six months of its getting the certificate of commencement of business and submit a statutory report of the same.

9. Transfer of Shares *[Sec.2(1-k)]*	The transfer of shares (if any) is restricted to specified limitation.	The transfer of share is not restricted and is at the will of shareholders.
10. Preparation of Articles	Preparation of Articles is mandatory for a private company.	Preparation of Articles is not compulsory in a public company. In case the Articles are not registered, the provisions of Schedule I of Table A shall be applicable.
11. Issue of Bearer Share Warrant	A private company cannot issue bearer share warrants.	A public company may issue bearer share warrants if the shares of the company are fully paid up.
12. Number of Directors	There must be at least two directors.	There must be at least three directors.
13. Qualification Shares	It is not mandatory for the directors to have qualification shares in a private company.	It is mandatory for the directors of a public company to have qualification shares.
14. Increase in Number of Directors	A private company can increase its number of directors without the permission of government.	A public company cannot increase the number of its directors without the permission of the government.
15. Loan to Directors	It is not necessary for a private company to get prior permission of the Central Government to give loan to its directors.	Prior permission of the Central Government is necessarily required for a public company to give loan to its directors.
16. Retirement of Directors by Rotation	It is not required by law for the directors of a private company to retire by rotation.	One-third of the directors of a public company are required to retire by rotation.
17. Filing of Documents	A private company need not submit the following documents to the Registrar of Companies: (a) list of directors (b) consent of directors (c) copy of any contract with the directors.	For the incorporation of a public company, it is compulsory to Hie these documents with the Registrar of Companies.
18. Use of the Word 'Limited'	It is compulsory to use the words 'Private Limited' at the end of the company's name.	Only the word 'Limited' is used at the end of the company name.

After discussing these two entities, it is very clear that there are so many aspects which distinguish them. Apart from the above-mentioned differences there are many other differences like, a public company can issue share warrant against its fully paid share to the shareholders, which a private company cannot.

The scope of a Private Ltd. The company is limited, as it is limited up to a few number of people, and enjoys less legal restrictions. On the other hand, the scope of a Public Ltd. company is vast, the owners of the company can raise capital from the general public and have to abide by several legal restrictions.

?	**Distinguish between a private limited company and a public limited company.** *[BBA -2006, 2017]*

4.8 Conversion of a Public Company Into a Private Company (সরকারী কোম্পানীকে বেসরকারীকরণ)

Though the Bangladesh Companies Act is silent about the rules regarding conversion of a public company into private company, The Companies Act 1994 lays down the following procedure for such conversion:

1. **Change in Articles of Association (পরিমেল নিয়মাবলির পরিবর্তন):** If a public company makes alteration in its articles of association by passing a special resolution to that effect it becomes a private company. *[Sec.2(1-k)]*In this case, company must provide for the fulfilment of three basic conditions as specified in *Section 3(1) (iii)* for a private company.
2. **Permission of Government (সরকারের অনুমতি):** In order to become a private company, a public company must compulsorily get the permission from central government for such changes, so that the government may be convinced that the proposed change will not cause any harm to any group or any person.*[Sec.232(1)]*
3. **Filing a Copy of Changed Articles of Association with the Registrar (নিবন্ধকের নিকট পরিমেল নিয়মাবলির পরিবর্তনের কপি সংযোজন):** After getting the permission of central government the company must file a copy of amended articles of association with the Registrar of Companies within 30 days. Filing of the amended articles of association of the company is compulsory to enable the registrar to make necessary changes in his record. After being satisfied the registrar issues a fresh certificate of incorporation to the company.
4. **Reduction of Number of Shareholders (শেয়ার মালিকের সংখ্যা হ্রাস):** A company will have to reduce the number of its shareholders to 50. It will have to restrict the transfer of its shares and will have to add the world "Pvt. Ltd." with its name.

?	**How can a public limited company be converted into private limited company?**

4.9 Conversion of a Private Company Into a Public Company (বেসরকারী কোম্পানীকে সরকারীকরণ)

In order to convert itself into a private company a public company will have to follow the following procedure under Bangladesh Companies Act, 1994:

1. **Violation of the Basic Conditions (মৌলিক শর্ত লঙ্ঘন):** If a private company violates any of the three conditions under Section 3(l) (iii) it will automatically be converted into a public company. However, if the Registrar of Companies is satisfied with the reasons furnished by a company for the violation of basic conditions, he may allow it to continue as a private company.
2. **Changing the Articles of Association (পরিমেল নিয়মাবলি পরিবর্তন):** A private company may pass a resolution to the effect that articles of association are changed in the manner that it may become a public company. In this case the restriction of Section 3(1) (iii) of Companies Act will not apply on the company and it will be deemed to be a public company since the date of passing such resolution.
3. **Filing of the Prospectus or Statement in Lieu of Prospectus with the Registrar (নিবন্ধকের নিকট প্রসপেক্টারস কপি সংযোজন):** If a private company passes a resolution to convert itself into a public company, it will have to file the prospectus or the statement in lieu of prospectus with the Registrar of Companies within 30 days of the changes in articles of association.
4. **Changing the Name and Capital Clause (নাম এবং মূলধন ধারা পরিবর্তন):** In order to convert into a public company, a private company will have to call a meeting of its shareholders at a notice of 21 days and will have to change the name clause. The word Private will be eliminated. The capital clause will be changed to a great extent. The total share capital will be divided into a number of shares and the shares will be allowed to be transferred freely.
5. **Changing the Number of Directors and Members (পরিচালক এবং সদস্য সংখ্যা পরিবর্তন):** To be converted into a public company, a private company will have to change the number of its directors and members, as required for the public company. It should have the minimum of 7 members and the minimum of 3 directors.
6. **Provision of Penalty (শাস্তির বিধান):** If the company does not comply with the above requirements and procedure, every officer of the company liable for the mistake will have to pay a penalty.
7. **Procedure (প্রক্রিয়া):** When a private company seeks to covert itself into a public company, to directors' draft resolution to that effect and call an extraordinary meeting of its shareholders, to pass this resolution. The private company is converted into a public company on the day when the resolution is passed as a special resolution. The directors of the private company will have to submit a declaration with the Registrar of Companies that all the requirements for the conversion of company into a public company have been duly complied with. The

Registrar scrutinizes the declaration. If he is satisfied, he registers the relevant information and makes the necessary changes in the memorandum of association and articles of association of the company. He also issues a fresh certificate of incorporation to the company. With this is completed the procedure of the conversion of a private company into a public company.

?	**How can a private limited company be converted into a public limited company?** *[BBA (Prof.)2008, 2019]*

4.10 Memorandum of Association
(পরিমেল-বন্ধ/স্মারকলিপি)

Memorandum of Association is the most important document of a company. It states the objects for which the company is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of the company. It determines the relationship between the company and the outsiders. Some definitions of this principal document are as under:

According to the Companies Act 1994, "The Memorandum of Association is a document which contains the fundamental rules regarding the constitution and activities of a company."

Lord Cairns says, "The memorandum of association of a company is the charter and defines the limitation of the power of the company established under the Act."

It is clear from the above definition that memorandum is the charter of a company and without it no company can be set up. In the memorandum itself the purpose, the permitted range and power of the company is described. It is such a charter that gives information about the company and the persons outside it.

?	**What do you mean by memorandum of association of a company?** *[BBA Professional 2016]*

4.11 Contents of Memorandum of Association
(পরিমেল-বন্ধ / স্মারকলিপির বিষয়বস্তু)

According to the Companies Act, the Memorandum of Association of a company must contain the following clauses *[Act. 94. Sec. 6(A)]*:

1. **Name Clause (নাম ধারা):** The name of the company should be stated in this clause. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. If it is a Public Limited Company, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.

2. **Situation Clause (পরিস্থিতি ধারা):** In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business.

   The registered office of a company can be shifted from one place to another within the town with a simple intimation to the Registrar. But in some situation, the company may want to shift its registered office to another town within the state. Under such circumstance, a special resolution should be passed. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

3. **Objects Clause (উদ্দেশ্য ধারা):** This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future.

   The objects clause must contain the important objectives of the company and the other objectives not included above.

4. **Liability Clause (দায় ধারা):** This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

5. **Capital Clause (পুঁজি ধারা):** This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

6. **Subscription Clause (গ্রাহক ধারা):** It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take at least one share. The minimum number of members is two in case of a private company and seven in case of a public company.

Thus the Memorandum of Association of the company is the most important document. It is the foundation of the company.

?	**What are the contents of memorandum of association?** *[BBA Professional 2011, 2016]*

4.12 Alteration of Memorandum of Association (পরিমেলবন্ধ / স্মারকলিপির পরিবর্তন)

Alteration in the Memorandum of Association can be carried out only by a special resolution at the Shareholders meeting. This is a complicated and lengthy procedure. So Memorandum must be very carefully prepared at the beginning itself.The following are the provisions related to alteration in Name Clause, Objects Clause, Liability Clause, Capital Clause and Subscription Clause.

1. **Alteration of Name Clause (নাম ধারার পরিবর্তন):** A company may by passing a special resolution alter is name with the approval of the Central Government. If the alteration involves change of the name to private limited or public limited, permission of Central Government is not required.

   In case a company has been registered with a name which resembles a name of an existing company, the Central Government may ask it to change its name. In such case ordinary resolution is sufficient.

   The intimation of name change should be given to the Registrar who will issue a fresh certificate of incorporation. Alteration of Situation clause

   (i) In case registered office has to be shifted within the same city, town or village, a notice has to give to the Registrar within thirty day of the change.
   (ii) In case registered office has to be shifted from one town to another town or one village to another village, a special resolution has to be passed.
   (iii) A company can change its registered office from one State to another State for the following reasons:
      a) to carry on business more efficiently and economically;
      b) to achieve the important purpose of the company by sophisticated means;
      c) to expand its operations in the current location;
      d) to control any of the existing objects;
      e) to sell whole or part of the business undertaking;
      f) to amalgamate with other business or person.

   In case, registered office has to be shifted from one State to another State, a special resolution has to be passed and approval from the Company Law Board has to be obtained by the company. The altered memorandum should be filed with the Registrar of the State from which the company is shifting and also to the Registrar of the State to which the company is shifted.

2. **Alteration of Objects Clause (উদ্দেশ্য ধারার পরিবর্তন):** A company can alter is objects clause by passing a special resolution. Alteration of objects clause can be done for the following reasons:

   (i) For the purpose of carrying on its business more economically and efficiently.
   (ii) For the purpose of obtaining the main business of the company by new and improved means
   (iii) For the purpose of enlarging or changing the local area of its operations.
   (iv) For the purpose of carrying on some business, which may be conveniently or advantageously combined with the existing business.
   (v) For the purpose of abandoning any of the objects specified in the memorandum.
   (vi) For the purpose of selling the whole or any part of the undertaking.
   (vii) For the purpose of amalgamating with any other company.

3. **Alteration of Liability Clause (দায় ধারার পরিবর্তন):** The liability clause can be altered only when a public company is converted to a private company.
4. **Alteration of Capital Clause (মূলধন ধারার পরিবর্তন):** A company can alter its capital clause by passing an ordinary resolution in a general meeting. Alteration of capital may relate to:
   a) Sub division of shares
   b) Consolidation of shares
   c) Conversion of shares into stock and cancellation of unsubscribed capital.

   Within thirty days of passing a resolution, the altered Articles and Memorandum have to be submitted to the Registrar.
5. **Alteration of subscription clause (চাঁদা ধারার পরিবর্তন):** The company can alter is subscription clause to make the liability of the directors appointed subsequent to the alteration as unlimited.

?	**When and how the Memorandum can be altered? [2010, 2015, 2017]** **Or, what is the procedure for making changes in the clauses of Memorandum of Association?** ***[BBA –PROF. 2013,10,07,05]***

4.13 Articles of Association
(পরিমেল নিয়মাবলী)

Articles of Association is an important document of a Joint Stock Company. It contains the rules and regulations or bye-laws of the company. They are related to the internal working or management of the company. It plays a very important role in the affairs of a company. It deals with the rights of the members of the company between themselves.

The contents of articles of association should not contradict with the Companies Act and the MOA. Articles that are profound to be registered should be printed, segmented well and sequenced consecutively. Each subscriber to Memorandum of Association must sign the articles in the presence of at least one witness.

?	**What is articles of association?**

4.14 Contents of Articles of Association
(পরিমেল নিয়মাবলীর বিষয়বস্তু)

The articles generally deal with the following

1. Classes of shares, their values and the rights attached to each of them.
2. Calls on shares, transfer of shares, forfeiture, conversion of shares and alteration of capital.
3. Directors, their appointment, powers, duties etc.
4. Meetings and minutes, notices etc.
5. Accounts and Audit
6. Appointment of and remuneration to Auditors.

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7. Voting, poll, proxy etc.
8. Dividends and Reserves
9. Procedure for winding up.
10. Borrowing powers of Board of Directors and managers etc.
11. Minimum subscription.
12. Rules regarding use and custody of common seal.
13. Rules and regulations regarding conversion of fully paid shares into stock.
14. Lien on shares.

?	**State the contents of articles of association.**

4.15 Alteration of Articles of Association
(পরিমেল নিয়মাবলির পরিবর্তন)

The alteration of the Articles should not sanction anything illegal. They should be for the benefit of the company. They should not lead to breach of contract with the third parties. The following are the regulations regarding alteration of articles:

A company may alter its Articles with a special resolution. Due importance and care should be given to ensure that the alteration of AOA does not conflict with the provisions of the Memorandum of Association or the Companies Act. A copy of every special resolution altering the Articles must be filed with the Registrar within 30 days of its passing.

1. The proposed alteration should not contravene the provisions of the Companies Act.
2. The proposed alteration should not contravene the provisions of the Memorandum of Association.
3. The alteration should not propose anything that is illegal.
4. The alteration should be bonafide for the benefit of the company.
5. The proposed alteration should in no way increase the liability of existing members.
6. Alteration can be made only by a special resolution.
7. Alteration can be done with retrospective effect.

The Court does not have any power to order alteration of the Articles of Association.

?	**How can Articles of Association of a company be altered?** ***BBA,PROF-2008***

4.16 Relationsship between Moa and Aoa
(MOA এবং AOA মধ্যে সম্পর্ক)

The following are some of the relation between Memorandum of Association and Articles of Association.

1. Both these documents are subordinate to the Companies Act.

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2. Both these documents are public documents. Members of the company and outsiders can inspect them and can purchase a copy of them by paying the prescribed fee in the office of the Registrar.
3. The Articles cannot modify the terms of the Memorandum.
4. The Memorandum must always be read together with the Articles while clarifying certain things.

?	**What are the relationship between MOA and AOA?**

4.17 Difference Between Moa And Aoa (MOA এবং AOA মধ্যে পার্থক্য)

All the companies have its own Memorandum of Association and Articles of Association; many people got puzzled between these two.

'Memorandum of Association' abbreviated as .MOA, is the root document of the company, which contains all the basic details about the company.

'Articles of Association' shortly known as AOA, is also a major document which contains all the rules and regulations designed by the company. Below you can see the basic differences between the Memorandum of Association and Articles of Association.

Basis	Memorandum of Association	Articles of Association
1. Meaning	Memorandum of Association is a document that contains all the fundamental information which are required for the incorporation of the company.	Articles of Association is a document containing all the rules and regulations that governs the company.
2. Defined in	Section 2 (28)	Section 2 (2)
3. Type of Information contained	Powers and objects of the company.	Rules of the company.
4. Status	It is subordinate to the Companies Act.	It is subordinate to the memorandum.
5. Retrospective Effect	The memorandum of association of the company cannot be amended retrospectively.	The articles of association can be amended retrospectively.
6. Major contents	A memorandum must contain six clauses.	The articles can be drafted as per the choice of the company.
7. Obligatory	Yes, for all companies.	A public company limited by shares can adopt Table A in place of articles.

8. Compulsory filing at the time of Registration	Required	Not required at all.
9. Alteration	Alteration can be done, after passing Special Resolution (SR) in Annual General Meeting (AGM) and previous approval of Central Government (CG) or Company Law Board (CLB) is required.	Alteration can be don in the Articles by passing Special Resolution (SR) at Annual General Meeting (AGM)

Conclusion: Memorandum and Articles are the two very important documents of the company, which are to be maintained by them as they guide the company on various matters. They also help in the proper management and functioning of the company throughout its life. That is why every company is required to have its own memorandum and articles.

?	**Distinguish between Memorandum of Association and Article of Association.**

[BBA Prof: 2016, 13, 12,10, 09, 07]

4.18 Difference Between Cooperative Society and Joint Stock Company
(সমবায় সমিতি এবং যৌথ মূলধনী কোম্পানির মধ্যে পার্থক্য)

The main difference between cooperative Society and company organization are given below:

Basis	Joint Stock Company	Cooperative Society
1. Legislation	A joint stock company is controlled by the company act.	A cooperative society is controlled by the co-operative society act.
2. Formation	Joint stock company formation procedure is difficult.	Cooperation society formation is easy.
3. No. of members	Public limited company is formed at least by two members and private by seven members.	Co-operative society is formed at least by ten members above than 18 years.
4. Objective	Joint stock company basic objective to earn maximum profit.	Co-operative society main objective is to improve the economic conditions of the members.
5. Liability	Joint stock company shareholders liability is limited.	Co-operative society liability may be limited or unlimited.
6. Right of transfer	Joint stock company shares can be transferred freely.	Cooperative society shares cannot be transferred to the nonmembers.
7. Issuance of debenture	Joint stock company may issue debentures to borrow money.	Co-operative society can not issue debentures.

8. Government Concessions	Joint stock company does not avail certain concessions given by the government.	Co-operative society enjoys various concessions.
9. Management	Joint stock company is managed by the Board of directors.	In the cooperative society every member has an equal right in the management.
10. Distribution of wealth	Joint stock company becomes the cause of unequal distribution of wealth.	Co-operative society is very helpful is removing the unequal distribution of wealth.
11. Middleman	In the joint stock company middleman plays very effective role.	In the cooperative society middleman has no role.
12. Sales of shares	Public limited company shares can be sold freely.	Cooperative society shares cannot be sold freely.
13. Audit	Public limited company accounts Audit is compulsory.	Co-operative society audit is not compulsory except co-operative farming.
14. Profit distribution	Joint stock company profit is distributed among the shareholders according to the paid up capital.	Co-operative society profit is distributed among the members according to their purchase from the store.
Winding up procedure	Joint stock company winding up and registration procedure is complicated and long.	Cooperative society registration and winding up is very simple.

Thus we can say that there are some differences between these two.

?	**What are the main difference between cooperative society and company?**

4.19 Formation of a Company
(কোম্পানি গঠন)

In "Bangladesh" perspective Joint Stock Company is formed, registered and guided by the Companies Act 1994. The promoters by themselves or by their appointed person undertook the task of formation. The procedure or formation of a company may be divided into four stages:

A. Promotion
B. Incorporation
C. Raising of capital
D. Commencement of business

A. **Promotion (প্রসার):** It is the first stage in the formation of a company. In this stage the idea of carrying on a business is conceived by a person or a group of persons called promoters. They make detailed investigation about the workability of the idea, amt of capital required, operating expense etc.

Before a company can be formed, there must be some persons who have an intention to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters.

The promoter is the person who brings a company into existence.

B. **Incorporation (অন্তর্গত করা):** A company is said to be incorporated when it is registered with the registrar under the companies act. The certificate of incorporation is the birth certificate of the company. A company comes into existence from the date mentioned in the certificate.

Procedure for Registration

The promoter has to first decide the proposed form of company as whether it is to be a public company or a private company.

They may form the company with limited liability, unlimited liability or limited by guarantee.

They have to decide the name of the company agreeable and desirable to all. For eg if the name proposed is identical with or closely resembles the name of an existing company, it is undesirable.

For getting registration an application has to be made to the registrar.

The application shall be accompanied by the following documents:

1) Memorandum of association
2) Articles of association
3) A statement of nominal capital
4) A notice of address of the registered office of the company.
5) A list of directors and their consent to a act signed by them
6) A declaration that all the requirements of the act have been complied with. Such declaration shall be signed by an advocate of high court or supreme court or a chartered accountant who is engaged in the formation of company

➢ **Certificate of Incorporation (অন্তর্গত সার্টিফিকেট):** If the registrar is satisfied that all the requirements of the act have been complied with he shall register the company and issue a certificate of incorporation. Once a company is registered incorporation cannot be challenged subsequently. The certificate of incorporation is a conclusive evidence of the fact that:

1) All the requirements of the act have been complied with.
2) Company is duly registered.
3) Company came into existence on the date of certificate.

➢ **Advantages of Incorporation (অন্তর্গতকরণের সুবিধা):**

1) Transferability of shares
2) Separate legal entity
3) Perpetual succession
4) Common seal
5) Separate property
6) Capacity to sue

C. **Raising of Capital (মূলধন বৃধি):** After incorporation a company can raise capital by issuing shares. A private company cannot issue shares to public.

In case of public company a copy of prospectus is filed with the registrar and it will be issued to the public. Those who are intended in purchasing share are required to send their application money to company's banker.

On the last date fixed for the receipt of application if the company has received application equal to minimum subscription the directors will start with allotment of shares.

D. **Commencement of Business (ব্যবসায় শুরু):** A private company may commence its business immediately after incorporation. But a public company cannot commence business immediately after incorporation but it has to obtain a certificate of commencement from the registrar.

?	**State the usual steps to be taken in the formation of a company under the companies Act-1994.** ***[BBA,PROF-2011,08]***

4.20 Duties of a Promoter (প্রবর্তকের কর্তব্য)

The following are the important duties and liabilities of a promoter:

1. **Duty to Disclose (প্রকাশের কর্তব্য):** The promoter is under a duty to disclose fully all the material facts relating to the formation of a company.
2. **Not to make any Secret Profit (গোপন প্রফিট না করা):** The promoter, as a rule, should not make any secret profit at the expense of the company, which is being promoted by him.
3. **Duty to Give Benefits of Negotiations to the Company (কোম্পানির সাথে সুবিধা প্রদানে আলোচনার কর্তব্য):** The promoter, as soon as he starts to act for the formation of the proposed company should give to the company the benefit of all negotiations or contracts entered into by him in respect of the company.
4. **Not to make Unfair Use of his Position (অবস্থানের অপ্রয়োজনীয় ব্যবহার না করা):** The promoter enjoys extensive powers. Therefore, he should not make unfair use of his position or the powers vested in him. Any unfair exercise of power shall render him liable to the company.

?	**What are the duties and liabilities of a promoter?**

4.21 Extent of the Liability of Promoters
(প্রবর্তকদের দায়বদ্ধতার পরিসর)

A promoter of a company is answerable for all wrongs he has committed. He is liable not only to the company but also to third parties. Even if he dies, his death cannot relieve his estate from this liability.

Similarly, the insolvency or insanity of the promoter does not release him from his liability. In the event of winding up, the liquidator or a contributory can hold him liable for misfeasance. He can be examined either privately or publicly.

?	**What are the extents of the liability of promoters?**

4.22 Remuneration To The Promoter
(প্রবর্তকে পারিশ্রমিক)

Strictly speaking, the promoter has no right to claim any remuneration. But in practice, the promoter is allowed to take reasonable remuneration for his services. Generally, he is paid in any one of the following ways:

1. He may be paid a lump sum in cash.
2. He may be given fully paid up shares in the company or partly in cash and partly in shares or debentures.
3. He may be paid a commission on the shares sold.
4. If he sells his own business he may be paid on the basis of the profit disclosed by him.

?	**What do you know about the remuneration paid to the promoter?**

4.23 Limitations of Promotional Remuneration
(উন্নয়নমূলক পারিশ্রমিকের সীমাবদ্ধতা)

The promoter has to apply to the Government for getting sanction of the promotional remuneration. The Government gives the sanction subject to the following limitations:

1. If a Managing Director manages the company, promotional remuneration should not exceed 1.5% of the estimated cost of the project.
2. If the Board manages the company, such remuneration should not exceed 10% of the estimated cost of the project.
3. The Government may ask the company to produce a list showing the details of expenses.

?	**Explain the limitations of promotional remuneration?**

4.24 Meaning of Prospectus
(প্রস্তাবিত কর্মপন্থা অর্থ)

Prospectus is an invitation issued to the public to offer for purchase/subscribe shares or debentures of the company. In other words, any advertisement offering shares or debentures of the company for sale to the public is a prospectus. A company secures capital by the issue of prospectus inviting deposits or offers for shares and debentures from the public.

It is a document containing detailed information about the company. It is an invitation to the public for subscribing to the shares or debentures of the company.

Private limited companies are strictly prohibited from issuing prospectus and they cannot invite public to subscribe to their shares. Only public limited companies can issue prospectus. Thus, it is an open invitation extended to the public at large.

?	**What is prospectus?**	***[BBA,PROF-2013, 2010, 2008, 2006, 2004, 2017]***

4.25 Objectives of Issuing Prospectus
(প্রসপেক্টাস সংকলনের উদ্দেশ্যসমূহ)

1. To bring to the notice of the public that a new company has been formed.
2. To preserve authentic record of the terms and allotment on which the public have been invited to buy its shares or debentures.
3. To secure that the directors of the company accept responsibility for the statements in the prospectus.

?	**What are the objectives of issuing prospectus?**

4.26 Requirements of a Correct Prospectus
(নির্ভুল প্রসপেক্টাসের আবশ্যকতা)

The correct prospectus must have the following.

1. It must not be exaggerated
2. It must contain full and honest disclosures
3. Material facts must be disclosed and should not to be concealed.
4. There must not be false details and untrue statements.

?	What are the requirements of a correct prospectus?

4.27 Contents of Prospectus
(প্রসপেক্টাসের উপাদান)

The contents of the prospectus have been specified in Schedule II of the Companies Act. The important contents in the prospectus include the following.

1. Name and address of the company
2. Objects of the company
3. Full particulars of the signatories to the Memorandum and number of shares taken by them.

4. The names, addresses and occupations of the directors, managing directors or managers etc.
5. The number and classes of shares.
6. The minimum subscription.
7. The qualification shares of a director and the remuneration of the directors.
8. The amount payable on application, on allotment and on calls.
9. The names of the underwriters.
10. The estimated amount of preliminary expenses.
11. The names and addresses of the auditors of the company.
12. Particulars about reserves and surpluses.
13. Voting rights of the different classes of shares.
14. Reports of the auditors regarding profits and losses of the company.
15. A similar report by the Chartered Accountant regarding the Profits and Losses and Assets and Liabilities of the Company.

?	**State the contents of a prospectus.**	***[BBA,PROF-2009,08,06,04]***

4.28 Consequences of Mis-Statements In Prospectus
(প্রসপেক্টাসে ভুল বিবৃতির পরিণতি)

The persons, responsible for preparing false and misleading prospectus will face civil and criminal liabilities.

1. **Civil liability (নাগরিক দায়):** In case, misleading prospectus amounts to misrepresentation, the aggrieved persons can repudiate the contract. They can claim refund of their money. Damages can also be claimed from the persons found guilty.
2. **Criminal liability (ফৌজদারি দায়):** In case any deliberate concealment is made, directors will be punished with a fine of Rs. 5,000 or imprisonment up to two years or both. If it is fraud the fine will extend to Rs. 10,000 or 5 years imprisonment or both.

?	**State the consequences of mis-statements in prospectus.**

4.29 Statement In Lieu of Prospectus
(বিবরণীপত্রের পরিবর্তে বিবৃতি)

When the prospectus is not issued by the company a statement in lieu of prospectus, must be filed with the Registrar at least three days before the allotment of shares. The contents of the statement in lieu of prospectus are very much similar to the prospectus. The statement must be signed by all the directors or their agents authorized in writing. These provisions do not apply to a private company.

?	**Define the term "Statement in lieu of prospectus".** **Or, distinguish between Prospectus and Statement in lieu of prospectus.** ***[BBA Professional 2013, 10, 04]***

4.30 What is Capital?
(মূলধন কী)

The term capital, in general, means the amount of money invested in a business. It includes not only the money invested at the time of inception of business firm but also all the moneys invested subsequently. Capital is must for all business concerns irrespective of their nature, size or constitution, and so without adequate capital no business can survive. The failure of many business concerns is only due to the lack of sufficient capital.

?	What is capital?

4.31 Share Capital
(শেয়ার মূলধন)

The term capital as used by a layman denotes only the contributions of the owner of a business firm i.e., owned capital. But the term capital is very wide in its scope. It means and includes owned capital as well as borrowed capital.

The capital raised by the company by issuing shares is called share capital. The Companies Act uses the term capital in several senses. They are the following:

1. **Authorized Capital (অনুমোদিত মূলধন):** This is the amount of capital stated in the capital clause of Memorandum of Association. It is also known as "Nominal Capital" or "Registered Capital". The company is entitled to raise finance by the issue of shares only up to the amount of authorized capital. However, the company can increase the amount of authorized capital by altering the Memorandum suitably. The promoters generally fix the amount of nominal capital after considering both the long-term and short-term requirements of the proposed company.
2. **Issued Capital (ইস্যুকৃত মূলধন):** It is that part of nominal capital which is issued to the public. Companies generally do not issue all its capital at once. They issue their capital in installments and so the issued capital is generally less than the nominal capital. It never exceeds the authorized capital.
3. **Subscribed Capital (সাবস্ক্রাইব মূলধন):** It is that part of the issued capital which is taken up by the public. Sometimes, the public may not take up all the shares that are offered to the public, for subscription. In such case, the subscribed capital shall be less than the issued capital. If the public subscribes all the shares, it shall be equal to the issued capital.
4. **Called up Capital (তলবকৃত মূলধন):** It is that part of the subscribed capital, which has been called up on shares. For example, if the face value of a share is Tk.10 and Tk.5 has been called up on each of the 10,000 shares, then the called up capital shall be Tk.50,000.

4. **Paid-up Capital (পরিশোধিত মূলধন):** It is that part of the subscribed capital which has been actually paid up by the shareholders. The amount not paid by the shareholders on the calls made is known as calls-in-arrears. The expression "Paid-up Capital" also includes the amount credited as paid up on the shares.

6. **Uncalled Capital (অতলবকৃত মূলধন):** It is that part of the capital, which is not called up on the shares already, issued. The shareholders continue to be liable to pay as and when the calls are made.

7. **Reserve Capital (সঞ্চয়ী মূলধন):** It is that part of the capital which the company has decided not to be called up except in the event of winding up of the company. Sometimes, a company may feel that the capital already paid up is sufficient for the proper conduct and smooth running of the company. In such case, it may decide not to call up a certain portion of its subscribed capital except in the event of winding up. The company law also sanctions the creation of a reserve capital otherwise known as "Reserve Liability".

As per law, the company is required to pass a special resolution to determine that any portion of its share capital, which has not been already called-up shall not be capable of being called-up except in the event of its winding up. If such a resolution is passed, then that portion of its share capital shall not be called-up except in that event. The purpose of this capital is to protect the interest of the creditors in the event of winding up of the company.

?	**What is share capital?**

4.32 Kinds and Classification of Share Capital
(শেয়ার মূলধনের প্রকারভেদ এবং শ্রেণিবিভাগ)

Share capital is not a condition precedent for incorporation of a company because the Act allows registration of companies without a share capital. But for trading companies capital is essential at every stage. The term capital, in relation to a company, can be broadly divided into four kinds. They are as below:

1. **Equity Capital (ইক্যুইটি মূলধন):** It consists of equity shares and denotes the capital raised by the issue of equity shares.

2. **Preference Share Capital (অগ্রাধিকার শেয়ার মূলধন):** It consists of preference shares and denotes the capital raised through the issue of preference shares.

3. **Debenture Capital (ঋণপত্র মূলধন):** It consists of debentures and denotes the money raised by the issue of debentures. The debenture is only a debt of the company and comes under the category of borrowed capital.

4. **Public Deposits (জনগণের আমানত):** Now-a-days companies like commercial banks, accept deposits from the public. The rate of interest is generally attractive.

?	**State different type of share capital.**

4.33 Methods of Raising Capital
(মূলধন বৃদ্ধির কৌশল)

A private company cannot raise capital by the public issue of share. Only a public company can issue its shares and debentures to the public and thereby mobilize the funds. There are three methods of raising the share capital from the public. They are

By directly selling the shares to the public (i.e., Public Issue),

By entering into an underwriting contract with the underwriters, and

By placing shares.

The company, when it feels that the whole issue may not be subscribed by the public it may either enter into an agreement with the underwriters or place the shares, so as to ensure the sale of the whole issue of the shares.

? **State the methods of raising the share capital from the public.** ***BBA Prof. 2016***

4.34 Difference between Share Warrant and Share Certificate
(শেয়ার ওয়ারেন্ট এবং শেয়ার সার্টিফিকেট এর মধ্যে পার্থক্য)

There are some differences between Share warrant and Share certificate. These differences are shown below:

Differentiating points	Share certificate (শেয়ার সনদ)	Share warrant (শেয়ার পরোয়ানা)
1. **Definition (সংজ্ঞা):**	A Share certificate is a certificate issued by a company specifying the number of shares held by any member.	A Share warrant is a document issued by a company, stating that its bearer is entitled to the share.
2. **Primacy of documents (দলিলের মুখ্যতা):**	It is the main document for proving the ownership of shares.	It is a substitute of the share certificate.
3. **Rule of issue (বিলির নিয়ম):**	It may be issued even though the share is partly paid.	It is issued only with fully paid up shares.
4. **Transfer (হস্তান্তর):**	It can be transferred by following the procedures stated in the Companies Act and the articles of the company.	It can be transferred by the delivery.
5. **Voting rights (ভোটাধিকার):**	The Share certificate holder has the voting right.	The Share warrant holder does not have the voting right.
6. **Contents (বিষয়বস্তু):**	It includes the name and address of the holder; price, serial no. etc.	It does not include the name and address of the holder. It only includes serial number, date of issue, price etc.

? **Differentiate between Share warrant and Share certificate.** ***[BBA Professional 2010, 09, 07, 06]***

4.35 Liabilities of The Concerned Parties for Conveying False or Fraudulent Information in The Prospectus
(বিবরণীপত্রে মিথ্যা বা বিভ্রান্তিমূলক তথ্য দিলে সংশ্লিষ্ট পক্ষগুলোর দায়-দায়িত্ব)

The following persons are liable for any false or fraudulent information on the prospectus:

(a) Directors of the company;

(b) The person who has agreed to become a director;

(c) Promoter(s) of the company;

(d) The person who has authorized the issue of the prospectus.

However, the liabilities of the concerned parties for conveying false or fraudulent information in the prospectus are as follows:

1. **Civil liability (অসামরিক দায়):** The concerned parties are liable to compensate the person who suffers from losses due to any false or fraudulent information of the prospectus.
2. **Criminal liability (অপরাধমূলক দায়):** The concerned parties shall be punishable with imprisonment (জেল) with or without fine which may extend to 2 years to 5 years.
3. **Liability under the law of fraud (ছলছাতুরির জন্য দায়):** The sufferer of the false or fraudulent statement of the prospectus may take action under the general law of fraud instead of proceedings of the Companies Act.
4. **Penalty for fraudulently inducing persons to invest money (জনগনকে মিথ্যাভাবে প্ররোচিত করে টাকা বিনিয়োগ করানোর জন্য শাস্তি):** The person(s) who fraudulently induces persons to invest money through concealment or false statement in the prospectus shall be punishable with imprisonment with or without fine which may extend to 5 years and 10, 000 taka.

So, these are the various liabilities of the concerned parties for conveying false or fraudulent information in the prospectus.

?	**What are the liabilities of the concerned parties for conveying false or fraudulent information in the prospectus?** *[BBA,PROF-2007]*

4.36 Liabilities of The Concerned Parties for Conveying False or Fraudulent Information in The Prospectus
(কোন কোম্পানির শেয়ারহোল্ডারদের দায়িত্ব ও দায়বদ্ধতা)

The rights, duties and liabilities of a shareholder of a company are given below:

Rights of shareholders

1. **Obtaining certificate (সনদ প্রাপ্তি):** A shareholder is entitled to get share certificate within 90 days from allotment of shares.
2. **Including name in the member list (সদস্য তালিকায় নাম অন্তর্ভূক্তি):** A shareholder is entitled to include his name in the member list.

3. **Transfer of share (শেয়ার হস্তান্তর):** A shareholder can transfer his share.
4. **Presence in meeting (সভায় উপস্থিত হওয়া):** A shareholder has the right to attend in the general meetings of the company.
5. **Voting (ভোট প্রদান):** A shareholder is entitled to vote in the general meeting.
6. **Inspection of accounts, reports and member list (হিসাব, প্রতিবেদন, সদস্য তালিকা ইত্যাদি পরিদর্শন):** A shareholder is entitled to inspect all the accounts, reports and member list of the company.
7. **Getting the copy of documents (দলিলাদির কপি পাওয়া):** A shareholder is entitled to get the copy of all relevant documents of the company.
8. **Getting the notice of meeting (সভার বিজ্ঞপ্তি পাওয়া):** A shareholder is entitled to get the notice of general meetings before 21 days of the meeting.
9. **Buying the right share (অগ্রাধিকার শেয়ার ক্রয়):** A shareholder is entitled to buy the right share.
10. **Receiving declared dividend (ঘোষিত লভ্যাংশ প্রাপ্তি):** A shareholder is entitled to receive the declared dividend of the company.
11. **Getting the copies of account and report (হিসাব এবং প্রতিবেদনের কপি পাওয়া):** A shareholder is entitled to get the copies of accounts and all reports without any fee before 14 days of annual general meeting.
12. **Application for meeting invitation (সভা আহ্বানের আবেদন জানানো):** If the annual general meeting of the company is not held in due time then a shareholder can apply for the court for arranging the general meeting.
13. **Getting interest in case of winding up (বিলোপ সাধনের সময় স্বার্থ পাওয়া):** A shareholder is entitled to get all his interest after the winding up of the company.

Liabilities

The liability of a shareholder depends on the nature of the nature of the company.

1. In a company limited by shares: The shareholder is not liable to pay anything more than the nominal value of the share.
2. In a company limited by Guarantee: The shareholder is liable to pay up to the amount of guarantee and the nominal value of the share.
3. In an unlimited company: The shareholder is liable to an unlimited extent for the debts of the company.

Duties and obligations

1. A shareholder must pay the unpaid amount due on the share, when calls are made.
2. In case of liquidation, the shareholders are to be placed in the list of contributories.

3. In certain cases, a transferor of a share is still liable for the unpaid shares of a company.
4. The memo and the articles constitute a binding contract between the shareholder and the company.
5. All the shareholders are bound to follow the legal decision of the majority of the shareholders.
6. Directors and managers can be made liable to an unlimited extent.
7. If the number of membership of the company falls to below 7 in public companies and below 2 in private company, the existing members become liable for the debts of the company to an unlimited extent.

So, these are the various rights, liabilities and duties of the shareholders.

? **State the rights, duties and liabilities of a shareholder of a company.**
[BBA PROF-2013, 08, 05, 2017]

4.37 Rules, According To The Company Act,1994 Are To Be Observed For Starting A Foreign Company In Bangladesh
(১৯৯৪ সালের কোম্পানী আইন অনুযায়ী, বাংলাদেশে বিদেশী কোন কোম্পানী চালু করতে অনুসরণীয় নিয়ম-কানুন অনুসরণ)

From the viewpoint of Bangladesh, foreign companies are those companies that are registered with others countries outside Bangladesh but establish a place of business within Bangladesh. Anyway, the following rules are to be observed for starting a foreign company in Bangladesh:

1. Foreign companies shall submit (জমা দেওয়া) the following documents to the Company Registrar of Bangladesh within one month of the establishment (প্রতিষ্ঠা) of the place of business for getting registration in Bangladesh:
   (a) A certified copy of the license or memorandum or articles of the company;
   (b) If the instrument is not written in Bengali or English language then a certified Bengali or English translation thereof;
   (c) The full address of the principal office of the company;
   (d) A list of directors and secretary, if any, of the company;
   (e) The names and addresses of one or more persons resident in Bangladesh who will accept any notice or other documents on behalf of the company;
   (f) The full address of the company's office in Bangladesh;
2. If the Company Registrar is satisfied with the above documents then he will register the company in Bangladesh.
3. Anyway, if any change in the above documents is required by the company, then the company must inform the Registrar about it by a notice within due time.

4. However, the name of the company and the country in which it is incorporated, must be exhibited on the outside of its every office in Bangladesh in easily understandable Bengali or English letters.

So, these are the various rules to be observed for starting a foreign company in Bangladesh.

?	**What rules, according to the Company Act, 1994 are to be observed for starting a foreign company in Bangladesh?** *[BBA,PROF- 2007]*

4.38 Statutory Meeting and Contents of a Statutory Report
(১৯৯৪ সালের কোম্পানী আইন অনুযায়ী, বাংলাদেশে বিদেশী কোন কোম্পানী চালু করতে অনুসরণীয় নিয়ম-কানুন অনুসরণ)

Every company having a share capital, must hold a general meeting of members within a period of not less than one month and not more than six months from the date of its commencement (শুরু)। This meeting is called the "Statutory meeting".

In this statutory meeting the members are to discuss a report by directors, known as "Statutory report". If contains particulars relating to the formation of the Company. This is a report drafted by directors and certified as correct by at least two of them. However, "Statutory report" includes the following contents:

1. The total number of fully paid up and partly paid up shares allotted;
2. The total amount of cash received by the company in respect of the shares;
3. An abstract of the receipts mentioning the expenses incurred for commission, brokerage etc;
4. The name, address and occupations of directors, auditors, managers, and secretary;
5. Particulars of contracts which are to be submitted to the meeting for approval;
6. If any underwriting contracts have not been carried out; and the reasons thereof;
7. The debts due on calls from directors and others;
8. Particulars of commissions and brokerages paid to directors and managers.

Particulars in the "Statutory report" are to be certified as correct by the auditors of the company.

?	**What is meant by "Statutory meeting"? Discuss the contents of a statutory report?** *[BBA PROF-2011,10,08,06, 2017, 2019]*

4.39 Qualifications or Qualities of Directors
(একজন দক্ষ পরিচালকের যোগ্যতা)

A shareholder needs to have the following qualities to qualify as a director of a company:

1. He must file with the Registrar a consent in writing to act as a director which must be signed by him.
2. In case of companies having share capital, he must sign the memorandum for a number of shares not less than his qualification shares.

3. He must file with the Registrar a contract in writing to take his qualification shares.
4. He must take his qualification shares.

Anyway, a shareholder shall not be capable of being appointed as a director of a company, if—

(a) He is of unsound mind;
(b) He is an insolvent;
(c) He has applied to be adjudicated as an insolvent and his application is pending;
(d) In spite of calling, he has not paid the value of the shares held by him and six months have elapse from the last date fixed for the payment;
(e) He is a minor;

However, a company may provide additional grounds for disqualification of a director in its Articles.

?	**What qualities does a shareholder of a joint stock company need to have to qualify as a director?** **Or, discuss the qualifications or qualities of directors.** *[BBA,PROF-2011,07]*

4.40 Methods /Ways of Appointment of Directors of a Company
(কোম্পানির পরিচালক নিয়োগ পদ্ধতি)

A public company must have at least 3 directors and a private company must have at least 2 directors. However, the various modes of appointment of directors are as follows:

1. **By promoters (প্রবর্তকদের দ্বারা):** The subscribers of the memorandum shall be deemed to be the directors of the company until the first directors are appointed.
2. **First directors (প্রথম পরিচালক):** Persons named in the articles of association as directors become the first directors of the company.
3. **By shareholders (শেয়ারহোল্ডারদের দ্বারা):** The directors of the company shall be elected by the shareholders in their general meeting from among them.
4. **By Board of Directors (পরিচালক পর্ষদ দ্বারা):** The Board of directors can appoint additional directors, alternative directors in place of absent directors, fill in casual vacancies.
5. **By Managing Agent (ব্যবস্থাপনা প্রতিনিধি দ্বারা):** If Managing Agent is appointed in a company, then they can appoint directors for the company according to the memorandum of the company. But, the number of such directors must not be more than one-third of the total directors.
6. **By Government (সরকার কর্তৃক):** Government can appoint directors for a company by following the memorandum of the company or in respect of the application of the shareholders.

So, these are the various mode of appointment of directors.

?	**Discuss the modes/forms/methods/ways of appointment of directors of a company.** *[BBA,PROF-2011, 2017]*

4.41 Debenture and Convertible Debenture
(ঋণপত্র এবং রূপান্তরযোগ্য ঋণপত্র)

A **debenture** is a document which shows that the company has borrowed a certain sum of money from the holder thereof upon some terms and conditions.

Convertible debenture is a debenture that is issued under the condition that they or a specified part of them will be converted into shares of the company. After a debenture is converted into share it does not get interest but gets dividend from the company.

?	**What is Debenture and convertible debenture?**	***[BBA,PROF-2006,05]***

4.42 Reserve Capital
(সঞ্চিতি তহবিল)

A limited company may by special resolution determine that any portion of its share capital shall not be called up (তলব করা), except in the event of the company liquidation. This uncalled capital, freed from call is called the Reserve capital of the company.

?	**What do you mean by "Reserve capital"?**	***[BBA PROF-2004]***

4.43 Winding Up a Company
(কোম্পানী বিলোপ সাধন)

There are three methods of winding up a company. These are as follows:

1. Compulsory winding up by the Court;
2. Voluntary winding up by the members or by creditors;
3. Voluntary winding up under the supervision of the Court;

(A) **Compulsory winding up (বাধ্যতামূলক বিলোপসাধন):** Compulsory winding up takes place when a Company is directed to be wound up by an order of Court. Such winding up can happen under the following circumstances:

1. **Special resolution of the Company (কোম্পানির বিশেষ রেজুলেশন):** If the company has, by special resolution determined that the Company be wound up by court.
2. **Default (ভুল):** If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.
3. **Not commencing or suspending the company (কোম্পানি শুর বা স্থগিত না করা):** If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.

ব্যবসায়ের আইনগত পরিবেশ ১৩ (খ)

4. **Reduction of members (সদস্য হ্রাস):** If the number of members is reduced, in case of a public limited company to below seven, and in the case of a private company to below two.
5. **Inability to pay debts (দায় পরিশোধে অসামর্থ্য):** If the company is unable to pay its debts.
6. **The just and equitable clause (শুধু এবং ন্যায়সংগত ধারা):** If the court is of opinion that it is just and equitable that the company should be wound up.

(B) **Voluntary winding up (ঐচ্ছিক বিলোপসাধন):** Voluntary winding up means winding up by the members themselves without the intervention of the court.

(C) **Voluntary winding up under the supervision of the Court (কোর্টের মাধ্যমে ঐচ্ছিক বিলোপসাধন):** Here, the voluntary winding up of a company takes place under the supervision of the court.

? What are the various methods/modes of company winding up or company liquidation? *[BBA Prof: 2016, 12, 09, 2017, 2019]*

4.44 Circumstances The Court May Think The Liquidation of a Company (পরিস্থিতি আদালত কোনো কোম্পানির বাতিল করার কথা ভাবতে পারে)

The court may think the liquidation of a company just and equitable under the following circumstances:

1. When the object for which it was incorporated has substantially failed;
2. When it is impossible to carry on the business of the company except at a loss;
3. When the assets of the company are inadequate to meet the liabilities;
4. When the majority of the shareholders are using their powers unfairly;
5. Where there is a deadlock in the management of the company;
6. Where public interest is likely to be prejudiced.
7. When the company was formed to carry out fraudulent or illegal business;
8. When the company is a mere bubble and does not carry on any business.

? In what circumstances the court may think the liquidation of a company just and equitable? *[BBA,PROF-2011,07, 2019]*

4.45 Meaning of Dissolution of a Company (কোনো সংস্থার বিযুক্তির অর্থ)

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company's name shall be struck off by the Registrar from the Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution thus puts an end to the existence of the company.

ifference between Dissolution & Winding Up of a Company:

S.No.	Winding Up	Dissolution
1.	Winding up is one of the methods by which dissolution of a company is brought about.	Dissolution is the end result of winding up.
2.	Legal entity of the company continues at the commencement of the winding up.	Dissolution brings about an end to the legal entity of the company
3.	A company may be allowed to continue its business as far it is necessary for the beneficial winding up of the company	Company ceases to exist on its dissolution.

Modes of Dissolution:

Dissolution of a company may be brought about in any of the following ways:

1. Through transfer of a company's undertaking to another under a scheme of reconstruction or amalgamation. In such a case, the transfer or company will be dissolved by an order of the Tribunal without being wound up.
2. Through the winding up of the company, wherein assets of the company are realized and applied towards the payment of its liabilities. The surplus, if any is distributed to the members of the company, in accordance with their rights.

? Discuss the Meaning of Dissolution of a Company.

EXERCISE

1. What is a company or joint stock company?
2. Write down the essential features of a company.
3. What are the advantages of Joint Stock Companies?
4. What are the disadvantages of Joint Stock Companies?
5. Explain different types of companies in brief.
6. Distinguish between a private limited company and a public limited company.
7. How can a public limited company be converted into private limited company?
8. How can a private limited company be converted into a public limited company?
9. What do you mean by memorandum of association of a company?
10. What are the contents of memorandum of association?
11. When and how the Memorandum can be altered?
    Or, what is the procedure for making changes in the clauses of Memorandum of Association? *[BBA,PROF-2013,10,07,05]*
12. What is articles of association?
13. State the contents of articles of association.
14. How can Articles of Association of a company be altered?
15. What are the relationship between MOA and AOA?
16. Distinguish between Memorandum of Association and Article of Association. *[NU 13,12,10,09,07]*
17. What are the main difference between cooperative society and company?
18. State the usual steps to be taken in the formation of a company under the companies Act-1994. *[NU 2011, 2008]*
19. What are the duties and liabilities of a promoter?
20. What are the extent of the liability of promoters?
21. What do you know about the remuneration paid to the promoter?
22. Explain the limitations of promotional remuneration?
23. What is prospectus? *[NU 2013, 10, 08, 06, 04]*
24. What are the objectives of issuing prospectus?.
25. What are the requirements of a correct prospectus?
26. State the contents of a prospectus. *[NU 2009,08,06,04]*
27. State the consequences of mis-statements in prospectus.
28. What is capital.
29. What is share capital?
30. State different type of share capital.

31. State the methods of raising the share capital from the public
32. Differentiate between Share warrant and Share certificate. *[NU 2010, 2009,07,06]*
33. What are the liabilities of the concerned parties for conveying false or fraudulent information in the prospectus? *[NU 2007]*
34. State the rights, duties and liabilities of a shareholder of a company. *[NU 2013,08,05]*
35. What rules, according to the Company Act, 1994 are to be observed for starting a foreign company in Bangladesh? *[NU 2007]*
36. What is meant by "Statutory meeting"? Discuss the contents of a statutory report? *[NU 2011, 10,08,06]*
37. What qualities does a shareholder of a joint stock company need to have to qualify as a director? Or, discuss the qualifications or qualities of directors. *[NU 2011,2007]*
38. Discuss the modes/forms/methods/ways of appointment of directors of a company. *[BBA,PROF-2011,10,06]*
39. What is Debenture and convertible debenture? *[BBA,PROF-2006,05]*
40. What do you mean by "Reserve capital"? *[NU 2004]*
41. What are the various methods/modes of company winding up or company liquidation? *[BBA (Prof.) 2012,09]*
42. In what circumstances the court may think the liquidation of a company just and equitable? *[NU 2011,2007]*

National University Questions and Solutions

1. Write down the essential features of a company. **[BBA (Prof.) 2006]**
2. Distinguish between a private limited company and a public limited company. *[NU 2006]*
3. How can a private limited company be converted into a public limited company? *[BBA (Prof.) 2008]*
4. When and how the Memorandum can be altered?
   Or, what is the procedure for making changes in the clauses of Memorandum of Association? *[BBA,PROF-2013,10,07,05]*
5. How can Articles of Association of a company be altered? *[NU 2008]*
6. Distinguish between Memorandum of Association and Article of Association. *[BBA (Prof.) 2013, 12, 10, 09, 2007]*
7. State the usual steps to be taken in the formation of a company under the companies Act-1994. *[BBA (Prof.) 2011, 08]*
8. What is prospectus? *[BBA (Prof) 2013,10,08,06,04]*
9. State the contents of a prospectus. *[NU 2009, 2008, 06,04]*

10. Differentiate between Share warrant and Share certificate. *[NU 2010, 2009, 2007]*
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15. What qualities does a shareholder of a joint stock company need to have to qualify as a director? Or, discuss the qualifications or qualities of directors. *[BBA (Prof.) 2011, 2007]*
16. Discuss the modes/forms/methods/ways of appointment of directors of a company. *[BBA (Prof.) 2011,10,06]*
17. What is Debenture and convertible debenture? *[BBA (Prof.) 2006, 2005]*
18. What do you mean by "Reserve capital"? *[NU 2004]*
19. What are the various methods/modes of company winding up or company liquidation? *[NU 2012, 2009]*
20. In what circumstances the court may think the liquidation of a company just and equitable? *[BBA (Prof.) 2011, 07]*

CHAPTER-05

The Partnership Act, 1932

Syllabus: The Partnership Act, 1932: The nature of partnership-Relations of partners to one another- Relations of partners to third parties-Incoming and outgoing partners-Dissolution of a firm- Registration of firms.

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5.41	Rights , Duties & Liabilities of Partners	*[BBA Professional 2008,05]*
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5.0 Introduction
(ভূমিকা)

There are different types of business available in the country. Partnership business is one of them. It is consist of the some partners (more than one) and they must have the good relationship and faith before starting the business. It any partners have the wrong mentality business can continue. So, the base of partnership business is fiduciary relationship.

Here we are discussing about the partnership business with some information regarding these ideology. The Partnership Act of 1932 (Act IX of 1932) applies to partnerships created by agreement between parties.

5.1 Origin of Partnership Act
(অংশীদারি আইনের উৎস)

From the ancient laws, one of the effective laws at present is partnership act. In Bangladesh, the relevant law for regulating partnership is the Partnership Act 1932. A partnership is defined as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The law does not require written partnership agreement between the partners to form a partnership.

A partnership does not also required to be registered; however an unregistered partnership has a number of limitation regarding enforcing its rights in any court. A partnership is considered as a separate legal identity (i.e. separate from its owners) in Bangladesh only if the partnership is registered. There must be a minimum of 2 partners and maximum of 20 partners.

This Act is called the Partnership Act, 1932. It extends to the whole of Bangladesh. It came into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933. After the independence in 1971, the law is still effective in Bangladesh.

5.2 Definition of Partnership
(অংশীদারী কারবারের সংজ্ঞা)

In Bangladesh, the relevant law for regulating partnership is the Partnership Act 1932.

According to **Section 4 of the Partnership Act 1932,**"A partnership is defined as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

The English Partnership Act defines Partnership as "the relation which subsists between persons carrying on business in common with a view of profit".

Persons who have entered into partnership with one another are called individually **"partners"** and collectively "a firm", and the name under which their business is carried on is called the **"firm name"**.

The Partnership Act 1932does not require written partnership agreement between the partners to form a partnership. A partnership does not also required to be registered, however an unregistered partnership has a number of limitation regarding enforcing its rights in any court. ***A partnership is considered as a separate legal identity (i.e. separate from its owners) in Bangladesh only if the partnership is registered.*** There must be a minimum of 2 partners and maximum of 20 partners.

Let's bring an example: for ease of understanding, Rohim wants to establish a restaurant, because he has long experience with restaurant management but he doesn't have the place or the money to start such business, he shared his idea with Ahmed who has an abandoned land beside the main road of the town, Ahmed also fund the idea of restaurant business lucrative but they still lack the money they need. Then both of them went to Farhan to collect some capital, Farhan also found that plan interesting he informed the other two that he can invest money but cannot involve with any activities of the restaurant due to lack of time.

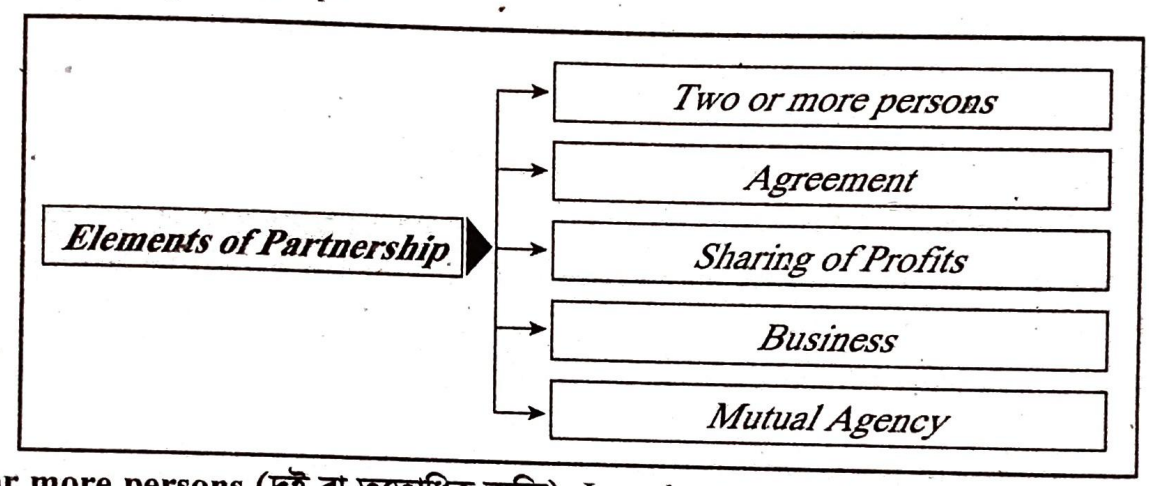
Hence, they named the restaurant as "Food Zone" and decided that Rohim will maintain the catering related matters, Ahmed will handle the sales, marketing and others and Farhan will remain as a silent after investing 20 lac taka. They will share the profit (as well as the loss) 30%, 40% and 30% accordingly.

In this example, "Food Zone" is a Partnership Firm and Rohim, Ahmed and Farhan are the partners of the firm.

?	**Define Partnership.**

5.3 Essential Elements of Partnership
(অংশীদারী কারবারের আবশ্যিক উপাদানসমূহ)

If we elaborate the definition of partnership we find this definition points out the following essential elements of partnership:



1. **Two or more persons (দুই বা ততোধিক ব্যক্তি):** In order to constitute a partnership legally there must be an association of at least two persons. Maximum number of Partners on banking business should not exceed 10 and in any other business 20.
2. **Agreement (চুক্তি):** Agreement There must be an agreement to form a partnership. This agreement may be express (whether written or oral) or implied. This essential element is further clarified under Section 5. Section 5 provides that the relation of partnership arises from contract and not from status.
3. **Sharing of Profits (মুনাফার অংশ):** The word Partnership is derived from the word "to part" which means "to divide". Thus division of profits is an essential condition of the existence of a partnership. The object of partnership should be to make profits and distribute among the partners.
4. **Business (ব্যবসায়):** A partnership can be formed only for the purpose of carrying on business. Business includes every trade, occupation and profession. The word business generally conveys the idea of running business involving numerous transactions. The business to be carried on by the firm must be legal.

5. **Mutual Agency (পারস্পরিক প্রতিনিধিত্ব):** The business of partnership may be carried on by all or anyone of them acting for all. Thus, if a person carrying on the business acts not only for himself but for others also, so that they stand in the position of principles and agents, they are partners. It is not necessary that all of them should actively participate in the affairs of business. The necessary element is that the business must be carried on, on behalf of all the partners.

To sum up, for determining the existence of partnership, the following must be considered:

a) There must be an agreement-oral or written;
b) The agreement must be to share the profits;
c) Those profits must arise from a business; and
d) That business must be carried on by all or anyone of them acting for all.

Thus we can say that all the element are co-exist in order to form a lawful partnership agreement. If any of these is not present, there cannot be a partnership.

?	What are the essential elements of partnership? Or. What are the tests of determining a true partnership? *[BBA,PROF-2008]*

5.4 Difference Between Partnership and Co-Ownership
(অংশীদারী কারবার এবং যৌথ-মালিকানার মধ্যে পার্থক্য)

In the co-ownership property is owned jointly without any intention to carry on business. Partnership is the relation between persons who have agreed to share the profit of a business. Difference between Partnership and Co-ownership are given below.

Basis	Partnership	Co-ownership
1. Profit Sharing	In the partnership profit sharing the basic object of the partnership formation.	In the Co-ownership there is no concept of profit and loss sharing.
2. Creation	Agreement or contract is essential for partnership.	Agreement is not essential for co-ownership.
3. Agent	Every partner is an agent of other partner in the partnership.	One co-owner is not the agent of other co-owner.
4. Members	In the partnership there is restriction for the maximum number of partners.	In the co-ownership there is no restriction for the maximum number of co-owners.
5. Transfer of Rights	In the partnership a partner cannot transfer his rights to another person without consulting the other partners.	In a co-ownership a co-owner can transfer his rights to anyone without consultation.
6. Legal Claim	In a partnership a partner has legal claim on the property of partnership.	In a co-ownership a co-owner has a legal claim on the joint property.

7. Division of Property	In a partnership a partner has no right to demand the partition of property. He can only demand the share of profit.	In a co-ownership a co-owner can demand the division of property.
8.Dissolution Risk	Partnership is affected by the death, insolvency or retirement of any partner.	Co-ownership cannot be dissolved due to above reasons.
9. Minor Case	In a partnership a minor cannot become a regular partner.	In a co-ownership a minor can become a regular co-owner.
10. Co-Ownership	Partnership necessarily involves working for profit.	Co-ownership does not.

Finally, Partnership and co-ownership are two different things. The ownership of a property by more than one person is called co-ownership. If two brothers purchase a property collectively, it will be a case of co-ownership. The property is not purchased with the object of earning profits. If a building is purchased to let it for rent, then it will be a case of partnership and not of co-ownership. In the co-ownership, there is only a joint ownership without any business motive. In partnership joint ownership and business are combined.

?	**What are the difference between partnership and co-ownership?**

5.5 Difference Between Partnership and Sole Proprietorship
(অংশীদারী এবং একমালিকানা কারবারের মধ্যে পার্থক্য)

Nowadays, many forms of business organization are present. Sole Proprietorship is one of the oldest and easiest form, which is still prevalent in the world. In this type of business, only one person manages and controls the business. But due to some drawbacks in this form of business, it gave birth to Partnership, where the number of owners has been increased to 2 or more. Here, the partners share the profits and losses, in the agreed ratio.

Many people utter confusion regarding these two business forms. Difference between Sole Proprietorship or Sole Trader ship and Partnership are given below:

Basis	Sole Proprietorship	Partnership
1. Formation	It is easy to form and simple to run. There is no legal formalities for the commencement of this type of business.	Partnership deed and such other legal documents are necessary for formation of partnership.
2. Number	In sole trader ship there is no concept of more than one person. Business is owned by one person only.	There are at least two persons in each type partnership but no more than twenty in ordinary business and ten in banking.

3. Contract	There is no concept of any contract due to one man.	It is created by contract. Agreement is most important element for partnership. No contract, no partnership.
4. Capital Volume	As one man invest his amount into his business, capital volume remains limited.	Capital is contributed by two, or more than two partners. Therefore capital volume may be increased by admitting new partners.
5. Personal Presence	Its management was to conducted by one man only. Therefore personal presence is compulsory.	This kind of business may be conducted by one or two partners only. Therefore personal preference for each partner is not necessary.
6. Profit and Loss	One man enjoys hundred percent profit of the business if there is loss he has to sustain all the losses.	Profit and loss are distributed among all the partners of the firm. In case of loss each partner may not feel heavy burden.
7. Transferring Right	Sole proprietor may easily transfer his business without the consent of another person.	One partner cannot dispose off or transfer his business without the consent of all other partners.
8. Decision	One man is supreme authority of his business. Therefore he may take any action against any matter promptly.	All the matters are decided by the mutual consultation. Therefore matters may not be disposed of promptly.
9. Accountability	As all business is owned by one person he has not be obey any order. So there is no fear of being accountable to anyone.	As partners are accountable to one another, they have to keep up-to-date record and correct information in connection with their business.
10. Expansion of Business	There are limited chances for the growth of business due to lack of capital and managerial abilities.	There are more chances to expand the business volume due to large number of partners.
11. Stability	There is no possibility of distribution due to one man. So this type of business may be run smoothly.	There is always risk of dissolution due to misunderstanding and friction among the partners.
12. Secrecy	Secrecy may be maintained in this form of organization on accounts of on man supervision.	As every partners know about the internal affairs of the business so there are great chances of leakage of the secrecy.

13. Abilities	One man cannot possess all types of technical and administrative abilities.	As there are number of partners, a firm may enjoy the combined abilities of several heads.
14. Organization Expenditure	There are minimum expenses to organize and operate this form of organization.	Partners have to pay legal fee, registration fees and other expenses. Therefore it is costly organization comparatively.
15. Dissolution	This kind of business may be dissolved easily without any legal formalities.	Partnership may not be dissolved without fulfillment of legal requirement.

We all know that everything has two aspects, so as with the case sole proprietorship and partnership. The former, is very simple to be established while the latter needs the agreement of the two or more persons but if you put it another way then you will see that there are more hands to work, more capital to invest and more knowledge to apply as well as in the absence of one partner the business will not suffer.

7 **What are the difference between Sole Proprietorship or Sole Trader Ship and Partnership?**

5.6 Difference Between Partnership and Company
(অংশীদারী কারবার এবং কোম্পানির মধ্যে পার্থক্য)

In the partnership firm, there must be at least two persons, mutually agree to run the business and share the profits or losses in a manner prescribed in the agreement. The maximum number of partners a partnership firm could have is only 20. This gave rise to the evolution of Company, in which there can be any number of members. The company is an association of persons who came together for a common objective and share its profit and losses. The points of distinction between the partnership and company may be summed up as follows:

Basis	Partnership	Company
1. Meaning	When two or more persons agree to carry on a business and share the profits & losses mutually, it is known as a Partnership firm.	A company is an association of persons who invests money towards a common stock, for carrying on a business and shares the profits & losses of the business.
2. Governing Act	Partnership Act, 1932	Companies Act, 1956
3. How it is created?	Partnership firm is created by mutual agreement between the partners.	The company is created by incorporation under the Companies Act.
4. Registration	Voluntary	Obligatory

5. Minimum number of persons	Two	Two in case of private company and Seven in case of public company.
6. Maximum number of persons	100 partners	50 in case of a private company and a public company can have unlimited number of members.
7. Audit	Not Mandatory	Mandatory
8. Management of the concern	Partners itself.	Directors
9. Liability	Unlimited	Limited
10. Contractual capacity	A partnership firm cannot enter into contracts in its own name	A company can sue and be sued in its own name.
11. Minimum capital	No such requirement	1 lakh in case of private company and 5 lakhs in case of public company.
12. Use of word limited	No such requirement.	Must use the word 'limited' or 'private limited' as the case may be.
13. Legal formalities in dissolution / winding up	No	Yes
14. Separate legal entity	No	Yes
15. Mutual agency	Yes	No

Due to various drawbacks in the partnership firm the concept of the company came into being. This is the reason, now a very little number of partnership firms can be seen, these days.

?	**Distinguish between partnership and company.**

5.7 Difference Between Partnership and Club
(অংশীদারী কারবার এবং ক্লাবের মধ্যে পার্থক্য)

A club is an association of persons formed for social purpose. It is not formed for gain and is not, therefore, a partnership. A club differs from a partnership in the following respects:

Basis	Partnership	Club
1. Objective	Its objective is to earn profits through a business.	Clubs exist to provide some services to its members.
2. Property	Partners have a share in the firm's property.	Club members have no interest in the club's property.

3. Membership	Admission into the firm is based on the consent of all the partners.	The club membership is governed by the rules laid down for the purpose and the consent of other members is not required.
4. Liability	It is unlimited, as partners are liable for the firm's debts, jointly and severally.	The club members do not have responsibility for the club's liabilities.
5. Agency relationship	Mutual agency relationship exists.	It does not exist.

Thus we can say that there are significant differences between these two. club are not formed in profit motive whereas the partnership is basis upon it.

?	**Distinguish between partnership and club.**

5.8 True Test of a Partnership
(অংশীদারিত্বের সত্যিকারের পরীক্ষা)

The true test of a partnership is a way for us to determine whether a group or association of persons is a partnership firm or not. It also helps us recognize the partners of the firm and separate them from the third parties.

The idea behind such a true test is to examine the relevant facts and determine the real relations between parties and conclude about the presence of a partnership.

Let us take a look at the three important aspects of a true test of a partnership, namely agreement, profit sharing and mutual agency:

1. **Agreement/Contract between Parties (দলগুলোর মধ্যে চুক্তি):** For there to be a partnership between two or more persons there has to be an agreement of partnership between them. The partnership cannot arise family status or any operation of law. There has to be a specific agreement between the partners.
2. **Profit Sharing (মুনাফার অংশগ্রহণ):** Sharing of profits is an aspect of the true test of a partnership. However, profit sharing is only a prima facie evidence of a partnership. The Act does not consider profit sharing as a conclusive evidence of a partnership. This is because there are cases of profit sharing that are still contradictory to a partnership. Let us see some such cases:
   - Sharing of profits/ gross receipts from a property that two or more persons own together or have a joint interest in is not a partnership
   - A share of profits given to an agent or servant does not make him a partner
   - If a share of the profit is given to a widow or child of a deceased partner does not make them partners
   - Part of the profits shared with the previous owner as a part of goodwill or as a form of consideration will not make him a partner.

Now ascertaining this motive becomes difficult if there is no express agreement between the concerned parties. In such a case we will consider the cumulative effect of all relevant facts. This will help us to determine the true relationship between the parties.

3. **Mutual Agency (পারস্পরিক প্রতিনিধিত্ব):** This is the truest test of a partnership, it I the cardinal principle of a partnership. So if a partner is both the principle as well as an agent of the firm we can say that mutual agency exists. This means that the actions of any partner/s will bind all the other partners as well.

So whenever there is confusion about the existence of a partnership between people we check for the presence of a mutual agency. If such an agency exists between the parties who run a business together and share profits it will be deemed that a partnership exists.

?	**Discuss the True Test of a Partnership.**

5.9 Formation of Partnership
(অংশীদারী কারবারের গঠন)

In a contract of partnership all the elements of a valid contract must be present. There must be free consent, consideration, lawful object and the parties must have capacity to contract. Thus an alien friend can enter into partnership, an alien enemy cannot. A minor is not competent to be a partner. A minor can, however, be admitted to the benefits of partnership, if all the partners agree to do so. A partnership agreement may be oral or it may be implied or inferred from the conduct of the parties. When it is reduced to writing it is incorporated in a document known as the Deed of Partnership or Articles of Partnership. The deed must be stamped according to the provisions of the Stamp Act. Thereafter, the firm may be registered with the Registrar of Firms, although registration is not compulsory. Because of the disabilities suffered by an unregistered firm, it is advisable to register every firm.

According to Section. 58 the registration should be made in the form of a Statement signed by all the partners and giving:

The firm's name

1. The principal place of business
2. The names of its other places of business
3. The date of joining of each partner
4. Names in full and permanent addresses of the partner
5. Duration of the firm

Registration may also be affected even alter a suit has been filed by the Finn

?	**How to form a partnership business?**

5.10 Regarding Registration of a Partnership Firm
(অংশীদারি ফার্মের নিবন্ধন সম্পর্কিত)

To get the fruits of a partnership [firm] some legal proceedings and approval of the government is necessary. The registration of a partnership firm is undertaken by **Office of the Registrar** of **Joint Stock Companies and Firms (RJSC)** this office is under the supervision of the Ministry of Commerce.

Here is how a partnership firm can be created in Bangladesh:

1. Before you take the first step the name of your firm must be decided then it must be checked at the following link: http://app.roc.gov.bd:7781/psp/nc_search?p_user_id= if you found that the name is clear to go [not used/registered by other] then you have to create an account and get a record that the name is cleared. After that, you have to pay an amount to bank according to their direction to reserve that name for you.

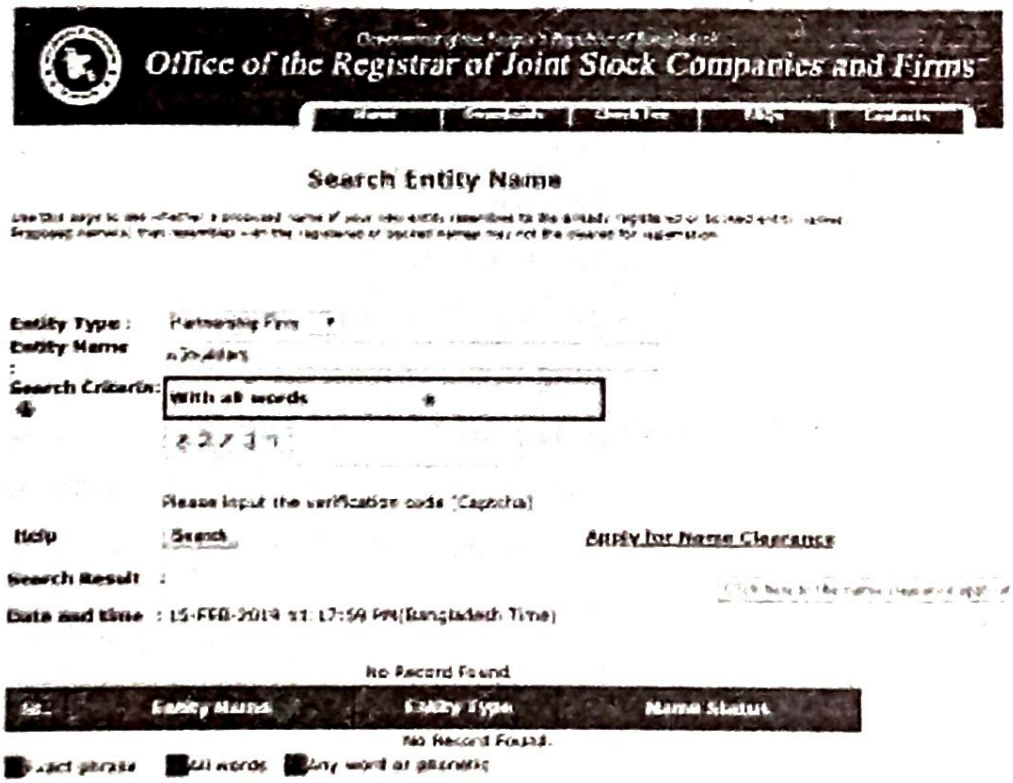


Fig: Registrar of Joint Stock Companies and Firms (RJSC) | Webpage view

2. Then you with the confirmation of the name you have to create a Deed of Partnership specifying the particulars of your business [more discussed later]
3. The Deed of a partnership must be written on the non-judicial stamp valued 2000 taka.
4. The Deed must be Notarized from a Notary Public (Advocate)
5. Then you have to pay an amount to RJSC to register your firm
6. After paying that, you have to submit the following document

- Copy of the Deed of Agreement
- NID of Partners
- Photos of Partners
- Name Clarence document
- Payment documents for registration
- Any other document that is required for your business [depends on the type of your business]

Deed of Partnership (অংশীদারিত্বের চুক্তি):

Deed of partnership is the single most important document for your business. I will contain all the necessary terms and conditions of your partnership deed clearly mentioning shares, risks, liability, duties etc. It is very important to create the deed carefully, the creator of the deed (the lawyer) must be skilled and experienced on business law otherwise he may miss various important points. It is better to be advised and settle the terms and conditions among the partners with the help of a lawyer.

It will also include the following particulars.

- Name and address of the firm.
- Names and addresses of the partners.
- The type and nature of the business of the firm.
- Amount of capital, Interest on Capital, Drawings, Interest on Drawings.
- Profit-sharing ratio.
- Salary of partner
- The accounting period of the firm
- Methods of recording of the firm's account and safe custody of books of account of the firm.
- Auditing rules.
- Date of commencement of partnership & Duration of partnership and the modes of its dissolution. [if needed]
- Bank Accounts rules.
- Rules to be followed in case of admission of a new partner or death of a partner.
- Dispute settlement
- Rules about the meeting, Bylaws etc.

Costs & Time (ব্যয় ও সময়)

Costs always vary on various circumstances but I may try to provide you with a general idea of the budget you need before you proceed with your next big idea.

1. Name Clearance fee – 100 – 500 taka
2. Deed of Partnership by an expert advocate – 10,000 [around] taka

3. Non Judicial stamp – 2500 – 3000 taka
4. Notary fee – 2000 – 5000 taka
5. Transport and others – 1000+

In total it would be better to budget at list 16,000 takas.

Generally, it will take around **7 (seven) days** to provide a digital certificate as proof of your registration. You can do all your legal activities like opening a bank account, get TIN, provide taxes etc with that digital certificate.

A partnership firm is a very suitable idea to start a business that requires joint effort and a minimum investment. If the partners became honest with their duties and irresponsibly it might be a matter of time to succeed if they succeed they can easily expand their business in the same form or by forming a company. However, if things go wrong and the enterprise fails it is also very easy to end their partnership without much hassle. Therefore, the partnership is a good and easy choice to consider for your potential or growing business.

?	**Describe the Regarding Registration of a Partnership Firm.**

5.11 Deed Of Partnership (Sample)
অংশীদারিত্বের দলিল (নমুনা)

It is important to have a legal piece of paper when you run your partnership business but often we are reluctant to have one. Here is a sample Deed of Partnership that may help you:-

DEED OF PARTNERSHIP

This Deed of Partnership is made on the 24th of May 2016 of the Christian era

— AMONG —

Md Rayhanul Islam, son of Md. Mahbubul Islam and Mashrur Jahan, having permanent address of Jahan Villa, Kalibari Road, Bhola – 8300 and present address of 44, West Agargaon, Dhaka-1207, bearing NID No 19935678901214567, by faith Muslim, by profession a businessman, by Nationality a Bangladeshi (by birth), hereinafter referred to as 'First Party' (which expression shall unless excluded by or repugnant to the context, mean and include heir/s, legal representative/s, administrator/s, nominee/s, and assign/s) of the First Part.

— First party

— AND —

Jakaria Nawaz, son of Md. Azom Ali and Maksuda Bibi, having present and permanent address of 55, East Agargaon, Dhaka – 1207, bearing NID No 19935678901214567, by faith Muslim, by profession a businessman, by Nationality a Bangladeshi (by birth) hereinafter referred to as 'Second Party' (which expression shall unless excluded by or repugnant to the context, mean and include heir/s, legal representative/s, administrator/s, nominee/s, and assign/s) of the Second Part

— Second party

— AND —

Takidul Islam, son of Md. Samsul Haque and Rabaiya Begum, having present and permanent address of House no. 10 Road no. 03, Sector 12, Uttara, Dhaka – 1207, bearing NID No 19935678901214567, by faith Muslim, by profession a businessman, by Nationality a Bangladeshi (by birth) hereinafter referred to as 'Third Party' (which expression shall unless excluded by or repugnant to the context, mean and include heir/s, legal representative/s, administrator/s, nominee/s, and assign/s) of the Third Part.

— Third party

WHEREAS the parties hereto agreed to form a partnership firm under this Deed of Agreement in the name of "w3builders" and also agreed to take all profits and liabilities of the firm "w3builder" which was formed by same partners based on a verbal agreement on 23rd August 2013.

AND WHEREAS the firm will be an Information and Technology Firm and shall be registered with the appropriate authorities.

AND WHEREAS the parties have mutually agreed to the terms and conditions of the said partnership as stated hereinafter.

NOW THIS DEED OF PARTNERSHIP WITNESSES AS UNDER:

1. That the partnership concerned shall be named and called as "w3builders"
2. That the partnership agreement shall be for at least 5 (five) years.
3. That the Managing Partner shall use his residence as home office for the time being and/or will set another place for the official address.
4. That the main invest would be the intellectual property of parties and the initial monetary invest for the firm would be BDT 1,00,000 (One Lac) taka only which would be contributed equally form each party.
5. That an account shall be opened with any scheduled bank in the name of the partnership firm and the said account will be operated by joint signatures of the partners.
6. That the partnership firm shall carry on the business of selling / Servicing website, software, domain, hosting, designing, advising, SEO and other IT service and products.
7. That proper books of accounts of the partnership firm shall be maintained. Any of the partners shall have access to the books of accounts and the said books of accounts shall be audited by a qualified Auditor at the end of each financial year.
8. That the profit or loss shall be equally shared unless there is an extraordinary risk is taken by any party and thus the firm suffer loss due to that extraordinary risk on such situation the parties shall decide the distribution of the loss due to that particular extraordinary risk, but whatever the condition is any single party shall not be made liable to bear more than 50% (Fifty per cent) of the total loss on that matter.
9. That from the profit of the party's total 10% (Ten Percent) profit will be saved in savings account and shall be used for the development of the firm under the mutual consent of all party.

10. That the parties may work in duel capacity for the firm, thus may have remuneration as an employee as well.
11. That the managing partner shall change in every 2 (two) year on the mutual consent of the parties, no party can hold the office of managing partner two times at a row.
12. That if there is any conflict or confusion or any interpretation is needed reference will always be made to the Partnership Act – 1932
13. That in case of any differences or disputes with the interpretation or implementation of the terms and conditions of this partnership Agreement, the same shall be resolved by Arbitrator Committee hereinafter mentioned.
14. That the committee will be formed with 6 (six) members 3 (three) of which will be non-interested neutral person and 1 representative of each party and the will solve the matter within 30 (thirty) working days, failing of which resulting the matter sent to the civil court.
15. That the arbitration committee shall conduct in accordance with the provisions of Arbitration Act 2001 as much as possible.
16. That if any party dies the profit of his portion will be given to his legal hires.
17. That this partnership is not as will. In the event of the demise of any partner, the partnership will not be dissolved and one of the heir(s) of deceased partner shall become a partner in his place. If there is more than one heir then the heirs will nominate and approve one of them who will become a partner in the place of the deceased partner.
18. That this Partnership shall dissolve by a public notification with the consent and approval of all partners.

IN WITNESS WHEREOF, THE PARTIES HERETO MUTUALLY AGREE TO SUBSCRIBE THEIR NAMES OF THE DAY, MONTH AND YEAR MENTIONED ABOVE.

SIGNATURE OF PARTIES

Rayhanul Islam

Md. Rayhanul Islam

— First party

Jakaria Nawaz

Md jakaria Nawaz

— Second party

Takidul Islma

Md Takidul Islam

— Third party

WITNESSES:

Abdur Rouf

Md. Abdur Rouf

Son of Kashem and Rohima

Address: 44 east agargown, Dhaka – 1201

NID: 19900124536987524

Mobile: 01712586945

Salim Raza

Son of Kashem and Moriom

Address: 45 east Sawrapara, Dhaka – 1206

NID: 199001245369875255

Mobile: 01712586945

Abdur Faruq

Son of Rahmna and Kadhja Bibi

Address: 48 east agargown, Dhaka – 1205

NID: 199201245369875568

Mobile: 01712586945

?	**Write down Deed Of Partnership (Sample).**

5.12 Effect of Non- Registration of a Firm
(একটি ফার্মের অ-নিবন্ধীকরণের প্রভাব)

Registration of partnership firm is not compulsory. It is optional and there is no penalty. Technically you can run an unregistered partnership as long as you want. As Section 69 of the Partnership Act seriously cuts short the capacity of an unregistered firm and its partners to sue. An unregistered firm and its partner suffer from the following disabilities.

1. The firm cannot sue a third party hut a third party can sue an unregistered firm
2. In any suit against the firm, the firm cannot claim a set off of more than Tk. 100.
3. A partner of an unregistered firm cannot sue each other. However if the suit is for the dissolution of the firm or for the accounts or his share he may sue the other partners.

Non-registration of a firm does not, however affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.

3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of the suit does not exceed Tk. 100 in value.

If a partnership firm wants to sue a third party, two conditions must be fulfilled:

1. The firm should be registered.
2. The partners suing should be named as partners of the firm.

?	**What are the effect of non-registration of a firm?**

5.13 Effect of Non- Registration of a Firm
(প্রতিষ্ঠানের নিবন্ধন নথিভুক্ত না করার প্রভাব)

While the English **Law** makes registration of firms compulsory and levies a fine for non-registration, the Partnership Act, 1932 has no such compulsions for firm registration and no **fines** for non-registration either. However, under Section 69 of the Act, certain disabilities are imposed on non-registered firms. These disabilities have a persuasive pressure on firms for registration. Now, we will discuss these aspects in detail.

Section 69 of the **Partnership Act, 1932** offers a detailed explanation of the consequences of not opting for firm registration. These are:

1. **No suit in a civil court by the firm or other co-partners against any third party (তৃতীয় পক্ষের বিরুদ্ধে কোনো প্রতিষ্ঠান বা অন্য সহ-অংশীদারদের দ্বারা কোনো দেওয়ানি আদালতে মামলা নেই):** If the firm registration is not done, then the firm or any other person on its behalf cannot file a suit against a third party for breach of **contract** which the firm has entered into. Further, the person filing the suit on behalf of the firm should be in the register of the firm as a partner.
2. **No relief to partners for set-off of claim:** Without firm registration, any action brought against the firm by a third party having a value of more than Tk. 100 cannot be set-off by the firm or any of its partners. Pursuance of other proceedings to enforce rights arising from the contract cannot be done either.
3. **An aggrieved partner cannot bring legal action against other partner or the firm (একজন আক্রান্ত অংশীদার অন্য অংশীদার বা প্রতিষ্ঠানের বিরুদ্ধে আইনী পদক্ষেপ নিতে পারে না):** A partner of the firm or any person on his behalf cannot bring legal action against the firm or against any partner (or alleged to be a partner) if firm registration is not done. However, if the firm is dissolved, then such a person can sue the firm for dissolution it accounts and realization of his share in the firm's property.
4. **A third party can sue the firm (তৃতীয় পক্ষ প্রতিষ্ঠানটিতে মামলা করতে পারে):** Even if the firm registration is not done a third party can bring legal action against the firm.

It is also, important to note that despite these disabilities, the non-registration of a firm does not affect the following rights:

- The right of a third party to sue the firm or any partner
- Partners' right to sue the firm for dissolution or settlement of accounts (in case of dissolution)
- The power of the Official Assignees, Receiver of Court to release the property of the insolvent partner and bring an action
- The right of the firm and partners to sue or claim set-off of the value of the suit does not exceed Tk. 100.

? Explain the Effect of Non- Registration of a Firm.

5.14 Kinds of Partnership
(অংশীদারির ধরন)

A partnership between two people is when they run a business together with the intention of sharing the profits amongst themselves. However, there can be various types of partnerships according to their duration or the intent of their creation. Let us take a look at the kinds of partnerships like a general partnership, partnership at will etc.

The distinction between partnerships can be done on the basis of two criteria. They are as follows:

- With Regard to the Duration of the partnership – either Partnership at Will or Partnership for Fixed Duration
- With regards to the extent of the business carried by the partnership – either General Partnership or Particular Partnership

So let us take a look at these kinds of partnership in some detail:-

1. **Partnership at Will (উইলের অংশীদারি):** When forming a partnership if there is no clause about the expiration of such a partnership, we call it a partnership at will. According to Section 7 of the Partnership Act 1932, there are two conditions to be fulfilled for a partnership to be a partnership at will. These are:-
   - There is no agreement about a fixed period for the existence of a partnership.
   - No provision with regards to the determination of a partnership

   So if there is an agreement between the partners about the duration or the determination of the firm, this will not be a partnership at will. But if a partnership was entered into a fixed term and continues to operate beyond this term it will become a partnership at will from the expiration of this term.
2. **Partnership for a Fixed Term (একটি নির্দিষ্ট মেয়াদে অংশীদারি):** Now during the creation of a partnership, the partners may agree on the duration of this arrangement. This would mean the partnership was created for a fixed duration of time.

   Hence such a partnership will not be a partnership at will, it will be a partnership for a fixed term. After the expiration of such a duration, the partnership shall also end.

However, there may be cases when the partners continue their business even after the expiration of the duration. They continue to share profits and there is an element of mutual agency. Then in such a case, the partnership will now be a partnership at will.

3. **Particular Partnership (বিশেষ অংশীদারি):** A partnership can be formed for carrying on continuous business, or it can be formed for one particular venture or undertaking. If the partnership is formed only to carry out one business venture or to complete one undertaking such a partnership is known as a particular partnership.

   After the completion of the said venture or activity, the partnership will be dissolved. However, the partners can come to an agreement to continue the said partnership. But in the absence of this, the partnership ends when the task is complete.

4. **General Partnership (সাধারণ অংশীদারি):** When the purpose for the formation of the partnership is to carry out the business, in general, it is said to be a general partnership.

   Unlike a particular partnership in a general partnership the scope of the business to be carried out is not defined. So all the partners will be liable for all the actions of the partnership.

?	**Discuss the Kinds of Partnership.**

5.15 Types of Partners
(অংশীদারির প্রকারভেদ)

A partnership is when two or more people work together and share the profits from the business or profession. However, one must not always assume that all partners participate in the work or profits or even liabilities of the firm equally. In fact, there are various types of partners based on the extent of their liability, or their participation in the firm – like an active partner or dormant partner etc. Let us take a look.

Here we will look at six types of partners we come across on a regular basis. This list is not exhaustive, the Partnership Act does not restrict any unique kind of partnership that the partners want to define for themselves. Let us take a look at some of the important types of partners:

1. **Active Partner/Managing Partner (সক্রিয় অংশীদার/অংশীদার পরিচালনাকারী):** An active partner is also known as Ostensible Partner. As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm.

   Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

2. **Dormant/Sleeping Partner (সুপ্ত/ঘুমন্ত অংশীদার):** This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.

   He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.

3. **Nominal Partner (নামমাত্র অংশীদার):** This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

4. **Partner by Estoppel (অংশীদারের প্রতিবন্ধকতা):** If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

5. **Partner in Profits Only (শুধুমাত্র লাভের অংশীদার):** This partner will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities.

6. **Minor Partner (ক্ষুদ্র অংশীদার):** A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

Such a minor partner on attaining majority (becoming 18 years of age) has six months to decide if he wishes to become a partner of the firm. He must then declare his decision via a public notice. So whether he continues as a partner or decides to retire, in both cases he will have to issue a public notice.

?	**Describe the Types of Partners.**

5.16 Who Can Become a Partner? (কে অংশীদার হতে পারে?)

A partnership agreement can be entered into between persons who are competent to contract. Every person who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject can enter into a partnership. The following can enter into a partnership

1. **Individual (ব্যক্তি):** An individual, who is competent to contract, can become a partner in the partnership firm. If there are more than two partners in a firm, an individual can be a partner in his individual capacity as well as in a representative capacity as Karta of the Hindu undivided family.

2. **Firm (ফার্ম):** A partnership firm is not a person and therefore a firm cannot enter into partnership with any firm or individual. But a partner of the partnership firm can enter into partnership with other persons and he can share the profits of the said firm with his other co-partners of the parent firm.
3. **Undivided Family (অবিভক্ত পরিবার):** An undivided family can become a partner in a partnership in his individual capacity, provided the member has contributed his self-acquired or personal skill and labor.
4. **Company (কোম্পানি):** A company is a juristic person and therefore can become a partner in a partnership firm, if it is authorized to do so by its objects.
5. **Trustees (ট্রাস্টি):** Trustees of private religious trust, family trust and trustees of Hindu mutts or other religious endowments are juristic persons and can therefore enter into partnership, unless their constitution or objects forbid.

Thus above mentioned person can become a partner as per the act.

?	Who can become a partner?	*[NU 2019]*

5.17 Who Can't Become a Partner?
(কে অংশীদার হতে পারে না?)

In case of partnership act everyone cannot become a partner. Following person can not become a partner:

1. **Minor (নাবালক):** A minor is not competent to contract, hence he cannot enter into partnership contract. However he may be admitted to the benefits of partnership, if all the partners agree to do so.
2. **Alien (বিদেশী):** An alien enemy cannot be partner in an Bangladeshi firm.
3. **Person of unsound mind (অপ্রকৃতিস্থ ব্যক্তি):** A person of unsound mind, not being competent to contract cannot enter into a partnership contract.
4. **Company (কোম্পানি):** A company, if authorized by its articles of association can enter into partnership because it is a person competent to contract in the eyes of law.
5. **Firm (ফার্ম):** A firm cannot enter into partnership contract. If a firm, at all enters into partnership in that case, the members become partners in the other firm in their individual capacity.

?	**Who can't become a partner?**

5.18 Position of a Minor in Partnership Firm
(অংশীদারী কারবারে নাবালকের অবস্থান)

A minor cannot enter into a contract of partnership. But if all the partners agree a minor may be admitted to the benefits of an already existing partnership firm. The position of a minor in partnership firm and the provision, of law in this respect are given below:

A minor can admitted to the benefit of partnership business with the consent of all other partners. This can be performed by an agreement executed by his guardian on his behalf with the existing partners of the firm.

A minor will be entitled to his agreed share of the property and of the profits of the firm.

He is not personally liable for the obligations of the firm but his share in profit and property may be liable for the debts of the firm.

He can file a suit for accounts and for his agreed share of property or profit when he severs his connection with the firm.

He has a right to inspect and copy books of accounts of the firm.

? Can a minor become a member of a partnership firm? Or, who can be a partner?
[BBA PROP-2006, 2009, 2012, 2015, 2017]

5.19 Position of a Minor After Attaining Maturity
(প্রাপ্ত বয়স প্রাপ্তির পর অংশীদারী কারবারে নাবালকের অবস্থান)

After attaining maturity and option to become a partner, his position will be as follows:

1. He will be personally liable for all obligations of the firm incurred since he was admitted to the benefits of the partnership.
2. The right and liability of the minor after attaining maturity continue to be those of a minor.
3. His interest into his business i.e. share in profit and property of the firm shall be the same which he has got as a minor.
4. He can perform the role of an agent and can bind the other persons by his act.
5. He is entitled to conduct the management of the business.

? Explain the position of a minor after attaining maturity in partnership firm.

5.20 Advantages of Partnership
(অংশীদারী কারবারের সুবিধা)

There are many merits or advantages of partnership. We can throw light on main and important merits or advantages of partnership. Partnership is preferred to others forms of business due to following reasons:

1. **Easy Formation (সহজ গঠন):** It can be easily organized without any legal formalities. Two or more persons may start the business at any time. Its registration is also very easy.
2. **Joint Efforts (যৌথ প্রচেষ্টা):** All the partners work jointly to improve the business. The firm distributes the work among the partners according to their ability and experience. It increases the efficiency of the firm.
3. **Larger Capital (অধিক মূলধন):** Partnership can collect more capital in the business by the joint efforts of the partners. In the sole proprietorship the sources and capital remains limited.

4. **Easy Borrowing (সহজ ঋণ):** The liability of the partners is unlimited this business. So the bank and other financial institutions provide the credit easily.
5. **Tax Facility (কর সুবিধা):** In this business every partner pays tax individually. So the firm is in a better position as compared to the joint stock company.
6. **Public Confidence (জনগনের আস্থা):** Public shows more confidence on partnership as compared to the sole proprietorship. If the firm is registered people feel no risk in creating relation with such business.
7. **Minority Protection (সংখ্যালঘু সুরক্ষা):** In this business all the policy matters are decided with the consent of each partner. So there is a protection of the minority partners.
8. **Flexibility (নমনীয়তা):** It is a flexible organization and partners can change their business policy with the mutual consultation at any time.
9. **Expansion of Business (ব্যবসায় প্রসার):** The business volume can be expanded easily because there are large number of partners and unlimited liability of each partner.
10. **Secrecy (গোপনীয়তা):** In this business there is no need to publish its accounts. So the business secrecy remains confined within partners.
11. **Skilled Worker (দক্ষ শ্রমিক):** In this business a firm can hire the services of qualified and competent persons due to strong financial position. It increases the profit of the firm.
12. **Sense of Responsibility (দায়িত্ব সচেতনতা):** In this business the liability of the partner is unlimited. So every partner performs his duties honestly and efficiently.
13. **Distribution of Loss (ক্ষতি বণ্টন):** If a firm suffers a loss it is distributed money all the partners. So no any single person bear all the loss.
14. **No Risk of Fraud (প্রতারনার ঝুকি নাই):** In this business each partner can look after the business activities and can also check the accounts. So there is no risk of fraud.
15. **Simple Dissolution(সহজ বিলোপ সাধন):** Partners may dissolve their business any time. There is no need of legal formalities.

?	**Why does partnership is preferred to others forms of business?**

5.21 Disadvantages of Partnership
(অংশীদারী কারবারের অসুবিধা)

Here we discuss about some main and important demerits or disadvantages of partnership. Following are the main disadvantages of partnership:

1. **Delay in Decisions (সিদ্ধান্ত গ্রহণে বিলম্ব):** In the partnership all the decision are made by mutual consultation. Sometimes delay in decisions becomes the cause of loss.
2. **Misunderstanding (ভুল বোঝাবুঝি):** Generally there is a chance of misunderstanding and dispute among the partners. It becomes the cause of business failure.

3. **Unlimited Liability (অসিম দায়):** Partners feels risk in the partnership due to limited liability. Because sometime a personal property of the partner can be sold for the clearance of the debts.
4. **Limited Life of the Business (ব্যবসায়ের সীমাবদ্ধ জীবন):** The life of the business is very limited. If any partner dies or new enters into the business. The old partnership may come to an end. In case of internal differences also it can be dissolved.
5. **Legal Defect (আইনগত ত্রুটি):** There are no effective rules and regulations to control the partnership activities. So it cannot handle the large scale production.
6. **Carelessness (অসতর্কতা):** In this business the responsibility of the partners is common. So sometime one partner becomes careless about his responsibility and creates problem for the firm.
7. **Transfer of Rights (অধিকার হস্তান্তর):** No one of the partner can transfer his shares to others without the consent of all the partners. It is a disadvantage in the business.
8. **Incapable Servants (অসমর্থ অংশীদার):** Generally incapable relatives and friends of the partners are employed. So the efficiency of the firm is affected badly.
9. **Lack of Capital (মূলধনের অভাব):** No doubt partnership capital is greater than the sole proprietorship. But as compared to the joint stock company it is small. So a business cannot be expanded on large scale.
10. **Difficulty in Withdrawal (উত্তোলনে কাঠিন্য):** It is very difficult for the partners to withdraw the capital from the business. Generally capital is frozen.

?	**What are the disadvantages of partnership?**

5.22 Partnership Agreement or Partnership Deed (অংশীদারী চুক্তি)

In the Partnership agreement terms and conditions relating to partnership and the regulations governing to its internal management are included. This agreement may be written or oral. But it is necessary that it should be in writing. Following are the important provisions of partnership deed.

1. **Date (তারিখ):** Date of starting the business should be written on it.
2. **Name (নাম):** Name of the firm under which the business is going started.
3. **Location (স্থান):** Location of the business should be also written that where it is going to start. Allotment of the place for head office and branches should be mentioned it.
4. **Duration (সময়কাল):** Duration of partnership is for indefinite period or for definite period. It should be also written.
5. **Nature of the Business (ব্যবসায় প্রকৃতি):** Nature of the business should be clear in it.

6. **Capital (মূলধন):** Total amount of capital and share of each partner in capital is also an important point of deed.
7. **Salary (বেতন):** The amounts of any salary payable to partners, should be mentioned in it.
8. **Ratio of Profit (মুনাফার অনুপাত):** Each partner rate ratio of profit and loss sharing should be clear in the partnership agreement.
9. **Rights and Duties (অধিকার এবং কর্তব্য):** There is also a provision of rights and duties of each partner.
10. **Entry and Exit Method (প্রবেশ এবং প্রস্থান পদ্ধতি):** Procedure to be followed for withdrawal and methods of admitting of new partners.
11. **Dissolution Case (ক):** In case of dissolution of the firm a special provision to be followed.
12. **Audit of Accounts (হিসাব নিরীক্ষা):** Audit and account preparation provisions are also available in it.
13. **Settlement in case of Dissolution (বিলোপ সাধনে সমন্বয় সাধন):** At the dissolution of a firm there is a provision of settlement of accounts.
14. **Arbitration (সালিসি):** In case of disputes provision for arbitration is also available.
15. **Witness (স্বাক্ষী):** The witness of agreement provision is also found in it. By the mutual consent of the partners any other clause may be included in it at any time.

?	**Explain the important provisions of partnership deed.**

5.23 Kinds of Partners
(অংশীদারের প্রকারভেদ)

Following are the important kinds or types of partners:

1. **Active Partner (সক্রীয় অংশীদার):** A person who provides his share in capital and also takes active part in the management. The development of business depends upon the active partners.
2. **Sleeping or Dormant Partners (ঘুমন্ত অংশীদার):** These partners only provide capital and also share the profit and loss of the business. A sleeping partner does not take part in the management of a firm. These are not know to public as a partner.
3. **Silent Partner (নিষ্ক্রিয় অংশীদার):** A silent partner is known to the public as a partner. He does not participate in the affairs of the management. But be is liable to pay debts of the firm.
4. **Secret Partner (গোপনীয় অংশীদার):** He takes active part in the business but public does not know him as a partner of the firm. He is liable to pay all the debts of the firm.
5. **Nominal Partner (নামমাত্র অংশীদার):** These partners do not share the profit and loss the firm. These do not participate in the management of a firm. A firm only uses the name and goods reputation of the partners. So these are called nominal partners.

6. **Minor Partner (ক্ষুদ্র অংশীদার):** A minor may become partner with the consent all the partners. A minor is only admitted in the profits of the business only. He has no liability of loss.
7. **Senior Partner (জ্যেষ্ঠ অংশীদার):** A person who is playing important role in the management according to his ability, experience and capital, is called senior partner.
8. **Junior Partner (জুনিয়র অংশীদার):** A person who has small investment in the firm and has a limited experience of business is called junior partner.
9. **Limited Partner (সীমিত অংশীদার):** A partner whose loss responsibility is restricted to his share only is called limited partner. He cannot take post in the management of a firm.
10. **Unlimited Partner (অসীম অংশীদার):** When the liability of the partner is unlimited he is called unlimited partner. The debts of firm can be paid even by the personal property of the partner.

?	**Explain different types of partners.**

5.24 Forms of Partnership (অংশীদারির ধরন)

Following are the important forms of partnership

1. **Partnership for Fixed Period (নির্দিষ্ট সময়ের জন্য অংশীদারি):** When the business partnership is formed for the definite period of time it is called partnership of time it is also called partnership to the fixed period. At the expiry of this period partnership comes to an end.
2. **Partnership At Will (ইচ্ছাধীন অংশীদারি):** Duration period of partnership is not fixed before starting the business. It can be dissolved by partner by serving the notice to other partners. It may be created under the following circumstances:
   1. When the partnership is formed for indefinite period.
   2. When the partnership is formed for a definite period but remains continue after the expiry of this period.
   3. If a partnership is formed to complete a particular venture but it remains continue after its completion. It is called partnership at will.
3. **Particular Partnership (নির্দিষ্ট অংশীদারি):** When a partnership is formed for the object of conducting a particular business. It is called particular partnership. The particular undertaking he cannot be extended to any other business.
4. **Limited Partnership (সিমিত অংশীদারি):** In this organization the liability of some persons is limited to their invested capital and other persons are liable for all the obligations of the firm.

?	**State different forms of partnership.**

5.25 Characteristics of Partnership
(অংশীদারির বৈশিষ্ট্য)

Partnership is a mean of bringing together the persons who can contribute capital, skill for the expansion of business. In the ordinary business number of partners shall exceed than twenty. In case of banking business they may not exceed than ten. This type of business organization is very popular in our country. The main characteristics or features of partnership are given below.

1. **Agreement (চুক্তি):** Without agreement partnership cannot be formed. The agreement may be written or oral. But it must be written on settle the disputes.
2. **Registration (নিবন্ধন):** It is not necessary that a partnership may be registered. But in case of registered firm many problems can be created.
3. **Number of Partners (অংশীদারের সংখ্যা):** In a partnership there should be at last two partners. In ordinary business the partners must not exceed the twenty. In case of banking not more ten.
4. **Profit and Loss Distribution (মুনাফা এবং ক্ষতিবন্টন):** The basic aim of partnership is to earn profit. This profit is distributed among the partners according their agreement. In case of loss also all the partners share in it.
5. **Business (ব্যবসায়):** The object of the partnership it to carry on the business. It may be production or trading. It should be according the laws of the state.
6. **Unlimited Liability (অসীম দায়):** The liability of the partner is not limited to his invested amount. In case of loss the private property of the partner also used to pay the business obligations.
7. **Entity (সত্তা):** Law has not granted it any legal entity, it is not independent from the partners. It has not separate entity from its members.
8. **Share in Capital (মূলধনে অনুপাত):** According to the agreement every partner contributes his share. It is not necessary all the partners should contribute equally. Some people provide only skill and ability to become a partner.
9. **Management (পরিচালনা):** All the partners can participate actively in the business management. Sometimes only few persons are allowed to handle the business affairs.
10. **Payment of Tax (কর পরিশোধ):** Every partner pays the tax on his share of profit individually.
11. **Co-Operation (সহযোগিতা):** For the successful partnership mutual co-operation and mutual confidence is an important factor.
12. **No Audit (কোনো নীরিক্ষা নাই):** In the partnership there is no restriction for the audit of accounts. So this type of organization may operate freely.
13. **Partners are Agent (সকল অংশীদারই প্রতিনিধি):** Every partner stand as an agent and principal to one another. In the position of an agent one can do contract with other parties on behalf of the firm.

14. **Transferability of Shares (শেয়ার হস্তান্তর):** No one partner can transfer his share to any other person without the consent of the existing partners.
15. **Dissolution (বিলোপ সাধন):** It is a temporary form of business. It operates at the pleasure of the partners. It is dissolved if a partner leaves, dies or declared bankrupt or insane. Partners can also dissolve it by obtaining the degree from the court.

So, these are the characteristics of a partnership. In a firm there are several features have to incorporate.

?	**What are the characteristics of a partnership?**

5.26 Duties of The Partner
(অংশীদারের দায়িত্ব-কর্তব্য)

Following are the important duties of the partner:

1. **General Duties of partners (অংশীদারদের সাধারণ কর্তব্য):** Partners are bound to carry on the business of the firm to the greatest common advantage, to the just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative. (Section 9)
2. **Duty to indemnify for loss caused by fraud (কর্তব্য কমানোর ক্ষতি পুরণ জালিয়াতি হ্রাস):** Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm. (Section 10)
3. **The conduct of the business (ব্যবসায় পরিচালনা):** Every partner is bound to attend diligently to his duties in the conduct of the business. [Section 12(b)]
4. **Mutual rights and liabilities (পারস্পরিক দায়িত্ব অধিকারসমূহ):** A partner is not entitled to receive remuneration for taking part in the conduct of the business. [Section 13(a)]

   The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm. [Section 13(b)]

   A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm. [Section 13(f)]
5. **Application of the property of the firm (কোম্পানি সম্পত্তির আবেদন):** Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business. (Section 15)
6. **Personal profits earned by partners (অংশীদার দ্বারা ব্যক্তিগত মুনাফা অর্জন):**(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm. [Section 16(a)]

   If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business. [Section 16(b)]

7. **Liability of a partner for acts of the firm (ফার্ম চালানোর ক্ষেত্রে অংশীদারদের দায়-দায়িত্ব):** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. (Section 25).

?	Describe the rights and duties & liabilities of partners in a partnership organization. *[BBA,PROF-2008, 2019]*

5.27 Relation of Partners with One Another (পারস্পারিক অংশীদারের সম্পর্ক)

All partners are free to form their own terms and conditions with respect to functioning in their partnership deed. The Partnership Act, 1932 has also prescribed provisions to govern their relationship inter se (amongst them), and these provisions are applicable if no such deed exists.

Right to Determine Relationship (সম্পর্ক নির্ধারণের অধিকার):

Partners can determine their mutual rights and duties by a contract called partnership deed, which determines aspects of general administration, such as which partner will do what work, what will be their share in profits, etc. It may be varied by express or implied consent of all the partners.

Such deed can be expressly made or implied by a course of dealing. For example, if one partner checks accounts of the firm daily and others do not object, his conduct will be presumed to be a right of all partners in the absence of a written partnership deed between them. So they can themselves determine the rights of partners.

Agreement in Restraint of Trade is Valid (বাণিজ্য নিয়ন্ত্রণে চুক্তি বৈধ):

Section 27 of the Contracts Act, 1872 declares contracts in restraint of trade as void. All agreements restraining exercise of a lawful profession, trade or business are invalid.

Section 11 of Partnership Act, however, states that partners can validly levy such a restraint on each other, but such restraint must be provided for under the partnership deed. Partners can use this agreement to prohibit each other from carrying on any business other than that of the firm.

?	**Discuss the Relation of Partners with One Another.**

5.28 Admission of a New Partner (নতুন অংশীদারের আগমন)

In section 23 of the partnership act provision regarding admission of a partner is stated-

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Following are the important conditions of admission:

1. **Consent of Other Partners (অন্যান্য পার্টনারের মতামত):** At any time new partner can be admitted in the partnership with the consent of all existing partners.
2. **Not be Insolvent (অস্বচ্ছল হবেনা):** A new partner admitted in a firm may not be insolvent.

3. **Liable for All Acts (সমস্ত কাজের দায়)**: After the date of admission new partner will be liable for all acts of the firm.
4. **Not Liable before the Admission Date (আগমনের পূর্বের জন্য দায়ী হবে না)**: A new partner will not be responsible about any action or obligation of the firm before his admission.
5. **Other Conditions (অন্যান্য শর্ত)**: If there are some other conditions, these will be determined according the provisions of partnership agreement.

?	**Explain the conditions of admission of a new partner.**

5.29 Retirement or Withdrawal of a Partner (অংশীদারের অবসর)

A partner may retire or withdrawal from the partnership in the following ways:

1. **With the Consent of Other Partners (অন্যান্য অংশীদারদের সম্মতি)**: A partner may withdraw or retire from the firm with the consent of all other partners.
2. **According to Agreement (চুক্তি অনুযায়ী)**: A partner may retire or withdraw from a firm accordance with an express agreement by the partners.
3. **Partnership at Will (ইচ্ছাধীন অংশীদারি)**: In case of partnership at will a partner may cure by the giving 14 days notice to other partners.
4. **Liable to Third Parties (তৃতীয় পক্ষের কাছে দায়বদ্ধ)**: A withdrawing partner will be liable to third parties for all acts of the firm until he gives public notice.
5. **Not Liable After Retirement (অবসর পর দায়ী নয়)**: After the retirement a partner is not liable for any act of the firm.
6. **Right of Benefits (সুবিধার অধিকার)**: Under the provisions of agreement a retired partner has a right to receive all the benefits from other partners.

?	**Explain the ways of withdrawal from the partnership?**

5.30 Rights of a Partner (অংশীদারদের অধিকার)

The rights of partners and the relations of partners to one another, are determined by the agreement of the partners. Where there is no express or implied terms in the agreement, the rules stated in the partnership act will be applied. Subject to any contract to the contrary, the important rights of partners are summarized below:

01. The conduct of the business (ব্যবসায় পরিচালনা): Subject to contract between the partners-

1. Every partner has a right to take part in the conduct of the business. [Section 12(a)]
2. any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and [Section 12(c)]

3. Every partner has a right to have access to and to inspect and copy any of the books of the firm. [Section 12(d)]

2. **Mutual rights and liabilities** (পারস্পরিক অধিকার এবং দায়-দায়িত্ব): Subject to contract between the partners-

1. The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm. [Section 13(b)]
2. Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits. [Section 13(c)]
3. A partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent, per annum. [Section 13(d)]
4. The firm shall indemnify a partner in respect of payments made and liabilities incurred by him-

   (i) in the ordinary and proper conduct of the business, and

   (ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. [Section 13(e)]

3. **Application of the property of the firm** (একটি প্রতিষ্ঠানে সম্পদের প্রয়োগ): Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business. (Section 15).

4. **Partner's authority** (অংশীদারগণের কর্তৃপক্ষ): Every partner has right to act on behalf of the firm. He has express and implied authority.

5. **Partner's authority in an emergency** (জরুরিভাবে অংশীদারদের কর্তৃপক্ষ): A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm. (Section 21)

6. **Reconstitution** (সুপারিশ): The constitution of a firm may be changed by the introduction of a new partner, death, retirement, insolvency, expulsion or by the transfer of a partner's share to an outsider. The rights and liabilities of the incoming and outgoing partners have been stated in the section 29 and 31 to 38.

7. **Rights of outgoing partner to carry on competing business** (কারবার থেকে অব্যাহতি অংশীদারের অধিকার): An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not

   (a) use the firm name,

   (b) represent himself as carrying on the business of the firm, or

   (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner. (Section 36)

8. **Right of outgoing partner in certain cases to share subsequent profits (কারবার থেকে অব্যাহতিপ্রাপ্ত অংশীদারদের নির্দিষ্ট ক্ষেত্রে শেয়ার প্রতি মুনাফার হার):** Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm: (Section 37)

Thus above mentioned rights have been raised by a partner in different situation. Right has been developed by the provision.

?	What are the rights of a partner?	*[BBA Professional 2016]*

5.31 Duties of Partners
(অংশীদারদের দায়িত্ব)

Now that we have seen the rights of partners let us see the duties the Act has prescribed:-

1. **General duties (সাধারণ দায়িত্ব):** Every partner has the following general duties like carrying on the business to the greatest common good, duty to be just and faithful towards each other, rendering true accounts, and providing full information of all things affecting the firm. etc
2. **Duty to indemnify for fraud (জালিয়াতির জন্য ক্ষতিপূরণ দেওয়ার দায়িত্ব):** Every partner has to indemnify the firm for losses caused to it by his fraud in the conduct of business. The Act has adopted this principle because the firm is liable for wrongful acts of partners. Any partner who commits fraud must indemnify other partners for his actions.
3. **Duty to act diligently (পরিশ্রমী আচরণের দায়িত্ব):** Every partner must attend to his duties towards the firm as diligently as possible because his not functioning diligently affects other partners as well. He is liable to indemnify others if his willful neglect causes losses to the firm.
4. **Duty to use the firm's property properly (প্রতিষ্ঠানের সম্পত্তি সঠিকভাবে ব্যবহারের দায়িত্ব):** Partners can use the firm's property exclusively for its business, and not for any personal purpose, because they all own it collectively. Hence, they must be careful while using these properties.
5. **Duty to not earn personal profits or to compete (ব্যক্তিগত আয় উপার্জন বা প্রতিযোগিতা না করার দায়িত্ব):** Each partner must function according to commonly shared goals. They should not make any personal profit and must not engage in any competing business venture. They should hand over personal profits made to their firm.

?	**Explain the Duties of Partners.**

5.32 Liabilities of a Partner
(অংশীদারী কারবারের অসুবিধা)

In partnership act a partner have different sort of liabilities. The partner's liabilities can be discussed below:

1. **Liability of a partner for acts of the firm:** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. (Section 25)
2. **Liability of the firm for wrongful acts of a partner:** Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable there for to the same extent as the partner. (Section 26)
3. **Liability of firm for misapplication by partners:** Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or [Section 27(a)]

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss. [Section 27(b)].

?	**What are the liability of a partner?**

5.33 Partnership Property
(অংশীদারি সম্পত্তি)

Section 14 of the Partnership Act, 1932, details the law surrounding the property of the firm or partnership property. Further, section 15 explains the various applications of such property. Now, we will endeavor to understand partnership property and its applications.

Partnership Property (Section 14)

The property of a firm is also known as partnership property, partnership assets, joint stock, common stock, or joint estate. A partnership property includes all property and rights, and interest in property that the partnership firm purchases.

These purchases can also be made for the purpose and in course of the business of the firm, including the goodwill of the firm. All partners collectively own such properties.

Hence, a partnership property comprises of the following items if there is no agreement between the partners showing any contrary intention:-

- All property and rights and interest in property that the partners purchase in the common stock as their contribution to the common business.
- All property and rights and interest in property that the firm purchases either for the firm or for the purpose and in course of the business of the firm.
- Goodwill of the business.

Determining whether a particular property is partnership property depends on the true intention or agreement between the partners.

Hence, if a firm uses the property of a partner for its purposes, it does not make it a partnership property unless that was the real intention. At any time, the partners may agree to convert the property of a partner or partners into partnership property.

If such a conversion is made in good faith, then it would be effectual between the partners and against the creditors of the firm. The partners may also agree to convert the separate property of any partners into the property of the firm.

Goodwill

Section 14 specifies that the goodwill of a business is the property of the firm and is subject to a contract between the partners. However, it does not define the term goodwill.

Goodwill is the value of the reputation of a business in respect of the expected future profits OVER AND ABOVE the profits that a firm earns in the same class of business. It is a part of partnership property. The firm can sell the goodwill separately or along with other properties.

When a partnership firm dissolves, all partners have a right to have the goodwill sold for the benefit of all the partners unless there is an agreement contrary to the same. After the firm sells the goodwill, any partner may make an agreement with the buyer to not carry on any business similar to that of the firm within a certain time-period or local limits. Such an agreement is notwithstanding anything contained in Section 27 of the Contract Act, 1872 and is valid if the restrictions are reasonable.

Application of Partnership Property (Section 15)

According to section 15, the partnership property should be held and used exclusively for the purpose of the firm. While all partners have a community of interest in the property, during the subsistence of the partnership no partner has a proprietary interest in the assets of the firm.

Each partner has a right to his share in the profits of the firm until the firm subsists. He also has a right to see that the application and use of the assets of the firm are for the purpose of the business of the partnership.

?	**Discuss the Partnership Property.**

5.34 Relation of Partners to Third Parties
(অংশীদারদের তৃতীয় পক্ষের সাথে সম্পর্কিত)

Now, we will look at the various rules that govern the relation of partners in a firm to a third party. Sections 18 to 22 of the Partnership Act, 1932, offer details of different scenarios under which partners can have different relations with a third party.

A Partner is an Agent of the Firm (Section 18)

A partnership is a relationship between partners who agree to share the profits of the business. The business can be carried on by all of them or any of them acting for all. This definition suggests that a partner can be an agent of the others.

Section 18 specifies that a partner is an agent of the firm for the purpose of business of the firm. This is actually one of the essential elements of a partnership.

Hence, a partner embraces the character of both, the principal and the agent. Therefore, if he acts for himself and in his own interest in the common concern of the partnership, then he is acting as a principal. On the other hand, if he acts for and in the interest of his partners, then he is acting as an agent.

It is important to note that a partner is an agent only or the purpose of business of the firm. He is not an agent for all transactions and dealings between the partners themselves.

? Explain the Relation of Partners to Third Parties.

5.35 Characteristics of Partnership
(অংশীদারী কারবারের)

Following are its main characteristics:

1. **Number of Members (সদস্যের সংখ্যা):** There should be not more than twenty and not less than two in the ordinary business. In a banking business not more than ten.
2. **Registration (নিবন্ধন):** The registration of the firm compulsory by law.
3. **Limited Partner (অংশীদারিত্বের সীমা):** There must be at least one limited partner.
4. **General Partner (সাধারণ অংশীদার):** There must be one or more partners who are liable for all the debts of the firm.
5. **Limited Participation (অংশগ্রহণের সীমাবদ্ধতা):** Limited partner cannot participate in the business management of the firm.
6. **Transfer of Share (শেয়ার হস্তান্তর):** A limited partner can transfer his share to others with the consent of other partners.
7. **Entry of New Partner (নতুন অংশীদারের আগমন):** A new member can be admitted to the partnership firm without consulting by the limited partner.
8. **Suggestions (সুপারিশ):** A limited partner can give his suggestions to improve the business.
9. **Inspection of Books (বহিসমূহের নিরীক্ষা):** A limited partner may inspect the records of business and accounts at any time.
10. **Word Limited (লিঃ শব্দ):** The word Limited is written with the name of firm for public information.

? What are the characteristics of a partnership?

5.36 The Dissolution of Partnership
(অংশীদারী কারবারের অবসান)

As per the section 41 the compulsory dissolution:

A firm is dissolved-

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

1. **Dissolution by Notice (নোটিশের মাধ্যমে অবলোপন):** In Case of partnership at will: The firm may be dissolved by any partner serving notice in writing of 14 days to all the existing partners of his intention to dissolve the firm.

   Section 43 states that: (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

   (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

2. **Dissolution by Agreement (চুক্তির ভিত্তিতে অবলোপন):** With the consent of all partners: A firm may be dissolved by the mutual consent of all partners at any time or in accordance with a contract between the partners. Section 40 of the partnership act lays down the provision- A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

3. **Contingent Dissolution (আকস্মিক বিলোপ সাধন):** Section 42 discuss the contingent dissolution:

   Subject to contract between the partners a firm is dissolved-

   (a) if constituted for a fixed term, by the expiry of that term;

   (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

   (c) by the death of a partner; and

   (d) by the adjudication of a partner as an insolvent.

4. **Dissolution by Court (আদালতের নির্দেশে বিলোপ সাধন):** The following are the grounds in which a firm may be dissolved by the order of court as per section 44 of the act:

   1. **A transfer of interest (স্বত্ব হস্তান্তর):** If any partner transfer his share or interest to other person without the consent of existing partners.
   2. **Breach of contract (চুক্তি ভঙ্গ):** If any partner commits breach of the partnership contract and remaining partners find it impossible to continue the business.
   3. **Unsound mind (অপ্রকৃতিস্থ):** If any partner becomes of unsound mind.
   4. **In-capacity of partner (অংশীদারদের ক্ষমতা):** The firm may be dissolved when a partner shows his incapacity to perform his duties due to any physical or mental disease.

5. **Misconduct of partner** (অংশীদারদের অপব্যবহার): If a partner is found guilty of misconduct in the carrying on the business.
6. **Assurance of loss** (ক্ষতির নিশ্চয়তা): The Court may issue the order of dissolution if the business of the firm cannot be carried on except at a loss.
7. **Other grounds** (অন্যান্য ক্ষেত্র): The court may dissolve the firm on any other grounds which is just and equitable.

?	What are the grounds of desolation of partnership firm?	***BBA Professional 2016***

5.37 Is The Registration of Partnership Firm Compulsory (অংশীদারি প্রতিষ্ঠানের নিবন্ধন কি বাধ্যতামূলক)

Registration is the people make their business legal. Anyway, the registration of a partnership is not compulsory in our country. They may or may not be registered. It absolutely depends upon the sweet-will of the partners. Therefore, an unregistered firm is not an illegal association. But, an unregistered firm suffers from certain disabilities. This is why, registration is necessary for carrying on business.

?	Is the registration of partnership firm compulsory?	***[BBA Professional 2007]***

5.38 Consequences of Non- Registration of a Partnership (অনিবন্ধিত অংশিদারী প্রতিষ্ঠানে পরিণতি)

An unregistered firm suffers from certain disabilities. These are shown below:

1. A partner of an unregistered firm is not entitled to enforce a contractual right against a third party by filling a suit in any court;
2. A partner of an unregistered firm is not entitled (অধিকার নাই) to recover through a court his dues from the firm or from his co-partners;
3. Neither the firm nor the partners will, when used, have the right to counter-claim (পাল্টা অভিযোগ) or set-off;
4. But the third party has the full right to file a suit in any court against any partner or the firm to recover his dues or enforce his any other rights;
5. A partner of an unregistered firm cannot file a suit to enforce his rights, against the co-partner or other business concerns.

However, the consequences of non-registration, shall no affect-

(a) the right to sue (নালিশ করা) for the dissolution;

(b) the right sue for accounts of a dissolved firm;

(c) the right to realize the property of a dissolved (ভেঙ্গে ফেলা) firm;

(d) the power of an official assignee or the court to realize the property of an insolvent partner.

?	**State the consequences/effects of non-registration of a partnership firm.** ***[BBA,PROF-11/ 08/07/06]***

5.39 Benefits of Registration of a Partnership Firm
(অংশিদারী প্রতিষ্ঠানের নিবন্ধনের সুবিধা)

The registration of a partnership is not compulsory in our country. They may or may not be registered. It absolutely depends upon the sweet-will of the partners. However, a registered firm gets the following benefits than an unregistered firm;

1. Take exciting opportunities and offers from Government and abroad;
2. Having loans from the bank
3. Face legal, political, natural and such kinds of problems;
4. Pay the taxes;
5. Use the port;
6. Export or import goods and other services;
7. A partner of a registered firm is entitled (আখ্যা দেয়া) to enforce a contractual right against a third party by filling a suit;
8. A partner of a registered firm is entitled to recover his dues from the firm or from his co-partners through a court;
9. A partner of a registered firm, has the right to counter-claim or set-off when sued;
10. A partner of a registered firm can file a suit to enforce his rights arising form a contract, against the co-partner or other business concerns.

So, these are the various benefits that a registered firm gets easily than the unregistered firms.

?	What are the benefits of registration of a partnership firm? *[BBA, PROF-2007]*

5.40 Partnership is The Branch of The Law of Agency
(একজন অংশিদার অন্য অংশিদারের প্রতিনিধি)

I think that a partner can be considered as an agent of another partner. Mutual agency is the most important feature of partnership. It states that the persons carrying on the business in partnership are agents as well as principals. The business of a firm is carried on by all or by any one or more of them on behalf of all. This is why, each partner is the agent of others in all maters connected with the business of the partnership.

?	Do you think a partner can be considered as an agent of another partner? or, do you think partnership is the branch of the law of agency? *[BBA,PROF-2005]*

5.41 Rights , Duties & Liabilities of Partners
(অংশিদারের অধিকার, দায়িত্ব ও কর্তব্য)

A partner has the following rights and liabilities subject (ব্যতিরেখে) to any clause provided in the partnership deed:

Rights of the partners

1. **Take part in the management:** (ব্যবস্থাপনায় অংশ গ্রহণ)

   A partner has a right to take part in the management and administration of the business. But, he cannot claim any extra remuneration for his services.

2. **Access (প্রবেশ), inspection(পরিবেশন), copy:**

   A partner has right of access to, and copy any of the books of the firm, Moreover, he can also inspect those of account.

3. **Can express opinion:** (মতবাদ প্রকাশ)

   Every partner shall have the right to express his opinion.

4. **Equality of profits:** (সমহারে মুনাফা বন্টন)

   Every partner is entitled to share in profits of the business equally. He must also bear all losses equally.

5. **To get indemnity:** (ক্ষতিপূরণ)

   A partner is entitled be indemnified by the firm for any acts or loss incurred by him as long as he acts for the benefit of the firm.

6. **Dissolution:** (চুক্তিভঙ্গ)

   A partner has the right to dissolve the partnership. He can or clam for this dues and properties from the firm after that dissolution.

Duties & liabilities of partners

1. All partners are jointly (যৌথ ভাবে) and severally (পৃথকভাবে) responsible (দায়ী) for all acts of the firm
2. A retiring partner continues to be able for all debts (ঋণ) and liabilities (দায়ী) of the incurred while he was a partner.
3. Anybody who represents himself is a partner of a firm earns all liabilities under the principle of holding out.
4. All partners must conduct (পরিচালনা) the business for the maximum common advantage of all partners.
5. All partners must be just (ন্যায়) and faithful (বিশ্বস্ত) to one another.
6. No member of the firm personally should make any personal profit at the expense of the firm.
7. Every partner should appoint himself diligently (আত্মাদিয়ে) and honestly to the work of the firm.

?	Describe the rights and duties & liabilities of partners in a partnership organization. ***[BBA Professional 2008,05]***

5.42 Minors Admitted to Benefits of Partnership
(অংশীদারিত্বের সুবিধাসমূহে ভর্তি অপ্রাপ্তবয়স্করা)

As we have seen in the Contract Act, minors cannot be a party to a contract. A contract involving a minor is void-ab-initio. However, the Partnership Act has its own sets of legal rules regarding minors. So let us study about minor partner and the benefits they gain from a partnership.

Section 30 of the Partnership Act 1932 contains legal provisions about a minor in a partnership. Now we know the Contract Act 1857 clearly states that no person less than the age of 18, i.e. a minor can be a party to a contract. And a partnership is a contract between the partners. Hence a minor cannot be a partner in a partnership firm.

However, according to the Partnership Act, a minor may be admitted to the benefits of a partnership. So while the minor will not be a partner he will enjoy all the benefits of a partnership. To admit all the minor to the benefits of the partnership all of the partners of the firm must be in agreement.

?	**Explain the Minors Admitted to Benefits of Partnership.**

5.43 Rights and Liabilities as of a Minor in Partnership
(অংশিদারের অধিকার, দায়িত্ব ও কর্তব্য)

A minor cannot enter (প্রবেশ করা) into a contract of partnership because an agreement by a minor is void (বাতিল). But, if all the partners agree, a minor any be admitted to the benefits of an existing firm. The rights and liabilities of such a minor partner are as follows:

Rights of a Minor Partner (একজন নাবালিক অংশীদার অধিকার):

Once the minor is given the benefits in a partnership there are certain rights that he enjoys. Let us take a look at the rights of a minor partner:

1. A minor partner will obviously have the right to his share of the profits of the firm. But the minor partner is not liable for any losses beyond his interests in the firm. So a minor partner's personal assets cannot be liquidated to pay the firms liabilities.
2. He can also like any other partner inspect the books of accounts of the firm. He can demand a copy of the books as well.
3. If necessary he can sue any or all of the other partners for his share of the profits or benefits.
4. A minor partner on attaining majority has the right to become a partner of the firm. He has six months from attaining majority to decide if he will execute this right. Whether he decides to become a partner or not he must give public notice about the same.

Liabilities of a Minor Partner (একজন নাবালিক অংশীদার দায়বদ্ধতা):

1. A minor cannot be held personally liable for the losses of the firm. And if the firm declares insolvency the minor's share is kept with the Official Receiver.

2. After turning 18 the minor partner can choose to become a partner of the firm. But he may choose to not become a partner. In this case, the minor partner has to give a public notice about this decision. And the notice has to be given within 6 months of gaining a majority. If such a notice is not given even after 6 months then the minor partner will become liable for all acts done by the other partners till the date of such notice.
3. Should the minor partner choose to become a partner he will be liable to all the third parties for the acts done by any and all partners since he was admitted to the benefits of the partnership.
4. If he becomes a full-time partner he will be treated as a normal partner and have all the liabilities of one. His share in the profits and property of the firm will remain the same as it was when he was a minor partner.

So, these are the various rights and liabilities of a minor.

?	Sate the right and liabilities as of a minor in partnership. *[BBA,PROF-2012, 10, 09]*

5.44 Rights of Outgoing Partner
(বহির্গামী অংশীদার অধিকার)

A partner who leaves the partnership firm in which the remaining partners continue the business is an outgoing partner. Such a partner has certain liabilities and rights as prescribed by the Partnership Law. In this article, we will focus on the rights of an outgoing partner.

Right of an Outgoing Partner to Carry on a Competing Business (প্রতিযোগিতামূলক ব্যবসায়ের সাথে বহির্গামী অংশীদারের অধিকার):

Section 36 (1) of the Partnership Act, 1932 (Partnership law), imposes certain restrictions but allows an outgoing partner to carry on a business and advertise it, which competes with the partnership firm. However, it restricts him from:-

- Using the name of the partnership firm
- Representing himself as a partner of the firm
- Soliciting the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 36 (2) talks about an agreement in restraint of trade. According to this subsection, an outgoing partner may make an agreement with his partners that when he ceases to be a partner of the firm, he will not carry on any business similar to that of the firm within a specified period or local limits. This is notwithstanding anything contained in Section 27 of the Contract Act, 1872.

Right of an Outgoing Partner to Share Subsequent Profits (পরবর্তী লাভগুলো ভাগ করে নেওয়ার জন্য বহির্গামী অংশীদারের অধিকার):

According to Section 37, of the Partnership Law, if a member of the firm dies or otherwise ceases to be a partner of the firm, and the remaining partners carry on the business without any final settlement of accounts between them and the outgoing partner, then the outgoing partner or his estate is entitled to share of the profits made by the firm since he ceased to be a partner.

The share may be attributable to the use of his share of the property of the firm or the interest at six percent per annum on the amount of his share in the property.

The surviving partners also have an option of purchasing the interest of the deceased or outgoing partner. If the surviving partners choose to purchase the interest, then the outgoing partner is not entitled to any further share in profits of the firm.

?	**Discuss the Rights of Outgoing Partner.**

5.45 Legal Consequences of Admission or Retirement of a Partner (অংশীদারের প্রবেশ বা অবসর গ্রহণের আইনি পরিণতি)

Whenever there is an admission of a new partner or retirement of a partner, or expulsion or insolvency of a partner, etc., the partnership firm undergoes reconstitution. Sections 31 to 35 of the Partnership Act, 1932 help us understand the legal consequences of a partner coming in or going out. Let us take a look:

Admission or Introduction of a Partner (Section 31) (অংশীদারের প্রবেশ বা পরিচিতি):

According to this section, the consent of all the existing partners is necessary before introducing a new partner into a partnership firm. This is subject to the provisions of Section 30 regarding minors in the firm. Further, the new partner has no liability for any actions of the firm done before his admission.

Rights and Liabilities of a New Partner (নতুন অংশীদারের অধিকার এবং দায়বদ্ধতা):

All liabilities of a new partner commence from the date of his admission as a partner in the firm. This is unless he accepts liability for the obligations incurred by the firm before his admission.

So, after the admission of a new partner, the new firm may agree to assume liability for the debts of the old firm and the creditors may accept the new firm as their debtor, discharging the old firm. It is important to note that the creditor's consent is important to make the transaction operative.

In a contract, the technical term for substituted liability is Novation. Hence, a mere agreement amongst the partners cannot operate as Novation unless the creditors provide their consent.

The retirement of a Partner (Section 32) (অংশীদার অবসর):

A partner retires when he ceases to be a member of the firm without ending the subsisting relations between the other members of the firm or between the firm and other parties. If a partner withdraws from a firm by dissolving it, then it is a dissolution and not retirement of a partner. The retirement of a partner from a firm does not dissolve it.

In a partnership, a partner may retire:

- With the consent of all the partners,
- In accordance with an express agreement by the partners, or
- The partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Liabilities of an Outgoing Partner (একজন বহির্গামী অংশীদারের দায়বদ্ধতা):

A retired partner continues to be liable to the third party for acts of the firm till such time that he or other members of the firm give a public notice of his retirement. However, if the third party deals with the firm without knowing that he was a partner in the firm, then he will not be liable to the third party.

The retired partner, however, continues to be liable for acts of the firm done before such retirement of a partner. This liability holds good unless there is an agreement between him, the concerned third party, and partners of the reconstituted firm. Such an agreement can also be implied by the course of dealings between the third party and the reconstituted firm post announcement of the retirement of a partner.

If the partnership is at will, then it can relieve a partner without giving a public notice. To do so, the partnership needs to give a written notice to all the partners of his intention to retire.

Expulsion of a Partner (Section 33) (অংশীদারকে বহিষ্কারকরণ):

A partnership firm can expel a partner provided:

- The power of expulsion exists in the contract between the partners
- Majority of the partners exercise the power
- The power is used in good faith

If these conditions are not met, then the expulsion is not bona fide in the interest of the business. The test of good faith includes three aspects:

1. The expulsion should be in the interest of the partnership.
2. Before expelling a partner the firm serves a notice to him.
3. The partner being expelled is given an opportunity to state his version of events leading up to the expulsion.

If these aspects are not met, then the expulsion is not considered to be made in good faith and is null and void. It is important to note that the expulsion of partners does not necessarily result in the dissolution of the firm.

Insolvency of a Partner (Section 34) (অংশীদারের নিদর্শন):

When a partner of a firm is adjudicated as insolvent –

- He ceases to be a partner of the firm from the date of the adjudication
- Whether or not the firm subsequently dissolves
- His estate, which vests in the official assignee, ceases to be liable for any act of the firm from the said date
- The firm ceases to be liable for any act of such a partner.

Liability of Estate of a Deceased Partner (Section 35) (একটি প্রয়াত অংশীদারের সম্পত্তির দায়):

Usually, the death of a partner results in the dissolution of the partnership. However, if the partner's contract to not dissolve the partnership post the death of any partner, then the surviving partner continue the business of the firm after absolving the deceased partner's estate from any liability of the future obligations of the firm.

Further, it is not necessary for the firm to give a public notice or inform the persons dealing with the firm about the death of the partner.

An exception is a partnership consisting of only two partners. In such cases, the death of a partner results in the dissolution of the partnership.

?	**Describe the Legal Consequences of Admission or Retirement of a Partner.**

5.46 Dissolution of a Firm (একটি প্রতিষ্ঠানের দ্রবীভূতকরণ)

When the partnership between all the partners of a firm is dissolved, then it is called dissolution of a firm. It is important to note that the relationship between all partners should be dissolved for the firm to be dissolved. Let us look at the legal provisions for the dissolution of a firm.

Modes of Dissolution of a Firm (মোড একটি ফার্মের দ্রবীভূতকরণ): A firm can be dissolved either voluntarily or by an order from the Court.

(A) **Voluntary Dissolution of a Firm (without the order of the Court) (একটি প্রতিষ্ঠানের স্বেচ্ছাসেবী বিযুক্তি):** Voluntary dissolution can be of four types. Let us take a look.

1. **By Agreement (Section 40) (চুক্তির মাধ্যমে):** According to Section 40 of the Partnership Act, 1932, partners can dissolve the partnership by agreement and with the consent of all partners. Partners can also dissolve the partnership based on a contract that has already been made.
2. **Compulsory Dissolution (Section 41) (বাধ্যতামূলক দ্রবণ):** An event can make it unlawful for the firm to carry on its business. In such cases, it is compulsory for the firm to dissolve. However, if a firm carries on more than one undertakings and one of them becomes illegal, then it is not compulsory for the firm to dissolve. It can continue carrying out the legal undertakings. Section 41 of the Partnership Act, 1932, specifies this type of voluntary dissolution.
3. **On the happening of certain contingencies (Section 42) (নির্দিষ্ট কিছু পরিস্থিতি ঘটছে):** According to Section 42 of the Partnership Act, 1932, the happening of any of the following contingencies can lead to the dissolution of the firm:
   - Some firms are constituted for a fixed term. Such firms will dissolve on the expiry of that term.
   - Some firms are constituted to carry out one or more undertaking. Such firms are dissolved when the undertaking is completed.
   - Death of a partner.
   - Insolvent partner.

4. **By notice of partnership at will (Section 43) (ইচ্ছায় অংশীদারিত্বের বিজ্ঞপ্তি দ্বারা):** According to Section 43 of the Partnership Act, 1932, if the partnership is at will, then any partner can give notice in writing to all other partners informing them about his intention to dissolve the firm.

   In such cases, the firm is dissolved on the date mentioned in the notice. If no date is mentioned, then the date of dissolution of the firm is the date of communication of the notice.

(B) Dissolution of a Firm by the Court (আদালত কর্তৃক একটি ফার্মের দ্রবীভূতকরণ): According to Section 44 of the Partnership Act, 1932, the Court may dissolve a firm on the suit of a partner on any of the following grounds:

1. **Insanity/Unsound mind (উন্মাদনা/অপ্রকৃতিস্থ):** If an active partner becomes insane or of an unsound mind, and other partners or the next friend files a suit in the court, then the court may dissolve the firm. Two things to remember here:
   - The partner is not a sleeping partner
   - The sickness is not temporary
2. **Permanent Incapacity (স্থায়ী অক্ষমতা):** If a partner becomes permanently incapable of performing his duties as a partner, and other partners file a suit in the court, then the court may dissolve the firm. Also, the incapacity may arise from a physical disability, illness, etc.
3. **Misconduct (অসদাচরণ):** When a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business, and the other partners file a suit in the court, then the court may dissolve the firm.

   Further, it is not important that the misconduct is related to the conduct of the business. The court looks at the effect of the misconduct on the business along with the nature of the business.
4. **Persistent Breach of the Agreement (চুক্তির অবিচ্ছিন্ন লঙ্ঘন):** A partner may willfully or persistently commit a breach of the agreement relating to
   - the management of the affairs of the firm, or
   - a reasonable conduct of its business, or
   - conduct himself in matters relating to business that is not reasonably practicable for other partners to carry on the business in partnership with him.

   In such cases, the other partners may file a suit against him in the court and the court may order to dissolve the firm. The following acts fall in the category of breach of agreement:
   1. Embezzlement
   2. Keeping erroneous accounts
   3. Holding more cash than allowed
   4. Refusal to show accounts despite repeated requests, etc.

5. **Transfer of Interest (সুদের হস্তান্তর):** A partner may transfer all his interest in the firm to a third party or allow the court to charge or sell his share in the recovery of arrears of land revenue. Now, if the other partners file a suit against him in the court, then the court may dissolve the firm.

6. **Continuous/Perpetual losses (অবিচ্ছিন্ন/নিয়মিত ক্ষতি):** If a firm is running under losses and the court believes that the business of the firm cannot be carried on without a loss in the future too, then it may dissolve the firm.

7. **Just and equitable grounds (ন্যায় ও ন্যায়সঙ্গত ভিত্তি):** The court may find other just and equitable grounds for the dissolution of the firm. Some such grounds are:
   - Deadlock in management
   - Partners not being in talking terms with each other
   - Loss of substratum (the foundation of the business)
   - Gambling by a partner on the stock exchange.

?	**Explain the Dissolution of a Firm.**

5.47 Difference between Dissolution of a firm and Dissolution of a Partnership (কোনো প্রতিষ্ঠানের দ্রবণ এবং অংশীদারিত্বের দ্রবণ মধ্যে পার্থক্য)

The differences between dissolution of a firm and dissolution of a partnership are shown below:

Parameters	Dissolution of a Firm	Dissolution of a Partnership
Continuation of business	The business discontinues.	The business continues. However, the partnership is reconstituted.
Winding up	The firm is wound up. Assets are realized and liabilities are settled.	Assets and liabilities of the firm are only revalued.
Court order	A Court Order can dissolve a firm.	A Court Order cannot dissolve a partnership.
Scope	It involves the dissolution of partnership between all partners.	It does not involve the dissolution of the firm.
Final closure of books	Yes	No

?	**Show the Difference between Dissolution of a firm and Dissolution of a Partnership.**

5.48 Consequences of Dissolution of a Firm (দ্রবণ বিশৃঙ্খলার ফলাফল)

After the dissolution of firm, the partners have certain rights and liabilities. Sections 45 to 55 of the Partnership Act, 1932, provides details on the consequences of the dissolution of a firm. Now, we will look at these sections in detail:

Liability for Acts done by Partners after the Dissolution of Firm (Section 45) (প্রতিষ্ঠানের দ্রবণ এর পরে অংশীদারের দ্বারা সম্পাদিত আইনগুলোর দায়বদ্ধতা):

According to this section, the partners of a firm are liable to a third party for any act done by any of them unless they give a public notice of the dissolution. This notice can be given by any partner. It also specifies that the estate of a partner who dies, retires from the firm, becomes insolvent, or that of a person who the third party is not aware of being a partner of the firm, is not liable under this section (from the date he ceases to be a partner).

In simple words, Section 45 endeavors to protect third parties who have no clue about the dissolution of firm and also the partners of a dissolved firm from liabilities towards third parties post-dissolution.

Wind up the Business Post-Dissolution (Section 46) (ব্যবসায়িক পোস্ট-বিচ্ছেদ শেষ করা):

Once a firm is dissolved, every partner or his representative has a right to apply the property of the firm in payments of debts and liabilities of the firm. The surplus, if any, can be distributed among the partners according to their rights.

Also according to section 47 post-dissolution, the authority of each partner to bind the firm, along with other mutual rights and obligations, continue till such time that they can wind up the affairs of the firm.

This gives them a chance to complete the unfinished transactions at the time of dissolution. This does not include the acts of a partner who has been adjudicated insolvent.

Settlement of Partnership Accounts (Section 48) (অংশীদারি অ্যাকাউন্টের নিষ্পত্তি):

Section 48 lays down certain rules for settlement of partnership accounts after the dissolution of firm under the usual course of business. However, the partners can mutually agree for a different settlement mode. The rules are as follows:

1. Any losses or deficiencies of capital will be paid out of profits. If the profits are not sufficient, then they are paid out of the capital and finally, if necessary, by the partners. The partners contribute in the proportion in which they receive their share in profits.
2. The assets of the firm, which includes the sums contributed by the partners to make up for the deficiency in the capital, is applied in the following order:
   - Repaying the debts of the firm to third parties
   - Paying each partner rateably what is due to him from the capital
   - Paying each partner rateably what is due to him on account of capital
   - If any amount is left, then dividing it among the partners in proportions in which they receive their share in profits.

Paying Firm Debts and Separate Debts (Section 49) (প্রতিষ্ঠান প্রদান এবং পৃথক পরিশোধ করা):

If there are joint debts due from the firm and separate debts due from any partner, then:

- The payment of firm debts is given priority. If there is any surplus, then the share of each partner is applied to his separate debts. It can also be paid to him.
- The separate property of the partner is applied first in the payment of his separate debts. IF there is any surplus, then it is applied to the payment of firm debts.

Personal Profits Earned after Dissolution of Firm (Section 50 and 53) (প্রতিষ্ঠানের দ্রবীভূত হওয়ার পরে অর্জিত ব্যক্তিগত লাভ):

A firm is dissolved by the death of a partner. If the surviving partners, either themselves or with the representative of the deceased partner carry on the business of the firm, then they have to account for any personal profits by them, before winding up the firm.

So, if a lease expires on the death of a partner and the surviving partners renew it before the firm winds up, then the profits belong to the firm.

Section 53 clearly states that in the absence of an agreement to the contrary, a partner can restrain other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit, unless the winding up process is complete.

Return of Premium on the Premature Dissolution of Firm (Section 51) (প্রতিষ্ঠান অকাল বিচ্ছেদ প্রিমিয়াম ফেরত):

If a firm dissolves earlier than the time fixed for it, then the partner paying the premium can receive a return of a reasonable part of the premium. This holds true except when the partnership is dissolved:

- Due to the death of a partner
- Due to the misconduct of the partner paying the premium
- Post an agreement which has no provisions for the return of premium

Also, the partner paying the premium gets a return of a proportionate part of the premium. This holds true when the partnership is dissolved:

- Without either partner being at fault
- Owing to the fault of both the partners
- Due to the fault of the partner receiving the premium
- Due to unawareness about the insolvency of the partner receiving the premium

Contract Rescinded for Fraud or Misrepresentation (Section 52) (জালিয়াতি বা ভুল উপস্থাপনের জন্য চুক্তি বাতিল করা হলে):

If the contract creating a partnership is rescinded due to fraud or misrepresentation, then the party who can rescind the contract is entitled to:

- Lien on the assets of the firm remaining after the debts of the firm is paid. This lien is for any sum paid by him for the purchase of a share in the firm and capital contributed by him.
- Rank as a creditor of the firm for any payment made by him towards the debts of the firm
- An indemnity from the partners guilty of the fraud or misrepresentation against all debts of the firm.

Sale of Goodwill after the Dissolution of Firm (Section 55) (প্রতিষ্ঠান বিলুপ্তির পর সদিচ্ছার বিক্রয়):

The goodwill is included in the assets during the settling of the accounts of a firm after dissolution. The goodwill can be sold separately or along with the other assets of the firm. This is subject to the contract between the partners.

Once the goodwill of the firm is sold after dissolution, a partner can carry on and advertise a business competing with that of the buyer of goodwill. However, subject to the agreement between him and the buyer, he may not:

- Use the name of the firm
- Represent himself as carrying on the business of the firm
- Solicit the customs of persons dealing with the firm before the dissolution

It is also important to note that a partner can make an agreement with the buyer of goodwill that he will not carry on any business similar to that of the firm or with certain local limits. Such an agreement, notwithstanding Section 27 of the Contract Act is valid if the restrictions are reasonable.

?	**Discuss the Consequences of Dissolution of a Firm.**

EXERCISE

1. Define Partnership.
2. What are the essential elements of partnership? Or. What are the tests of determining a true (প্রকৃত) partnership? *[NU 2008]*
3. What are the difference between partnership and co-ownership?
4. What are the difference between Sole Proprietorship or Sole Trader Ship and Partnership?
5. Distinguish between partnership and company.
6. Distinguish between partnership and club.
7. How to form a partnership business?
8. What are the effect of non-registration of a firm?
9. Who can become a partner?
10. Who can't become a partner?
11. Can a minor become a member of a partnership firm? Or, who can be a partner? *[NU 2006]*
12. Explain the position of a minor after attaining maturity in partnership farm
13. Why does partnership is preferred to others forms of business?
14. What are the disadvantages of partnership?
15. Explain the important provisions of partnership deed.
16. Explain different types of partners.
17. State different forms of partnership.
18. What are the characteristics of a partnership?
19. Describe the rights and duties & liabilities of partners in a partnership organization. *[BBA,PROF-08,05]*
20. Explain the conditions of admission of a new partner.
21. Explain the ways of withdrawal from the partnership?
22. What are the rights of a partner?
23. What is the liability of a partner?
24. What are the characteristics of a partnership?
25. Wow does firm is dissolved?
26. Is the registration of partnership firm compulsory? *[NU 2007]*
27. State the consequences/effects of non-registration of a partnership firm. *[BBA, PROF-2011/ 08/07/06.]*
28. What are the benefits of registration of a partnership firm? *[BBA,PROF-2007]*
29. Do you think a partner can be considered as an agent of another partner? or, do you think partnership is the branch of the law of agency? *[BBA,PROF-2005]*
30. Describe the rights and duties & liabilities of partners in a partnership organization. *[BBA,PROF-2008, 05]*
31. Sate the right and liabilities as of a minor in partnership. *[BBA,PROF-2012,10,09,07,06]*

National University Questions and Solutions

1. What are the essential elements of partnership? Or. What are the tests of determining a true (প্রকৃত) partnership? *[NU BBA-2008]*
2. Can a minor become a member of a partnership firm? Or, who can be a partner? *[BBA,PROF-2006]*
3. Describe the rights and duties & liabilities of partners in a partnership organization. *[BBA,PROF-2008,05]*
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9. Sate the right and liabilities as of a minor in partnership. *[BBA,PROF-2012,10,09,07,06]*

SHORT QUESTION ANSWER

1. Can a partner bind the firm?

A partner can bind the firm by the means of his acts relating to partnership business. Persons carrying on business in partnership are agents as well as principals. The business of a firm is carried on by all or any one or more of them acting for all. Every partner has the authority to act on behalf of all and can, by his actions, bind all the partners of the firm.

2. What are the essential elements of a Partnership?

A partnership, as defined in the Act, must have three essential elements:

a. **Contractual relation / Voluntary agreement:** There must be an agreement entered into by two or more (20, but in case of Banking 10) persons.

b. **Sharing profit/ loss:** The agreement must be to share the profits of a business.

c. **Carrying of business / Mutual agency:** The business must be carried on by all or any of the partners acting for all.

3. Can a firm be liable for the wrongful acts of a partner?

A firm can be liable for the wrongful acts of a partner. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore is liable to the same extent as the partner.

4. What do you understand by partnership at will?

A partnership is called a partnership-at-will;

1. When the partnership is not for a fixed period of time, and
2. When no provision is made as to when and how the partnership will come to an end.

A partnership at will can be dissolved whenever any partner chooses to do so.

5. Can you spell out the procedure for registration of a firm?

1. If any firm wants to be registered then it shall have to made application to the registrar under prescribed form & fee mentioning the following subjects / information:
    a) Name of the firm
    b) The principal office
    c) The branch office (if any)
    d) Objectives
    e) Date of joining of each partner
    f) Date of constitutions
    g) Name and full address of the partners
    h) Duration of the firm
2. The above application must be signed & verified by all partners or their agent specially authorized on this behalf.
3. If registrar satisfies with the application he record an entry of the statement in the Register of Firm and the firm is thereupon considered to be registered.

6. What do you mean by Registration of Firms?

Registration of firm means the registration of the contract with the registrar. It is not compulsory but an unregistered firm suffers from certain disabilities and therefore registration is necessary for carrying on business.

7. Is it mandatory for a firm to registration?

The registration of a partnership firms is not mandatory. Therefore an unregistered firm is not an illegal association. But an unregistered firm suffers from certain disabilities and therefore registration is necessary form carrying on business.

8. What are the effects or consequences of Non-registration of a firm?

An unregistered firm and the partners thereof suffer from certain disabilities:

1. A partner of an unregistered firm cannot file a suit (against the firm or any partner thereof) for the purpose of enforcing a right arising from contract or a right conferred by the Partnership Act.
2. No suit can be filed on behalf of an unregistered firm against any third party for the purpose of enforcing a right arising from a contract.
3. An unregistered firm cannot claim a set-off in a suit.
4. Cannot claim to the court for the receivable amount exceeding Tk. 100 from the third party.

Exceptions:

1. A partner of an unregistered firm can file a suit for the dissolution of the firm and for accounts.
2. Suits can be filed for the realization of the properties of a dissolved firm even though it was registered.
3. The Official Assignee or Receiver can realize the properties of an insolvent partner of an unregistered firm.
4. There is no bar to suits by unregistered firms and by the partners thereof in areas where the provision relating to the registration of firms do not apply by notification of State Government under Section 56.
5. Partners have right to claim for his portion of share from access the assets of dissolved firm.
6. An unregistered firm can file a suit (or claim a set off) for a sum of not exceeding Tk. 100.

9. Can a minor be admitted as a Partner?

A minor cannot enter into a contract of partnership because an agreement by a minor is void. But if all partners agree, a minor may be admitted to the benefits of an existing firm.

10. In what situations compulsory dissolution may take place?

Dissolution of a partnership firm is compulsory in case of following cases:

1. by the adjudication of all the partners or of all the partners but one as insolvent, or
2. by the happening of any event which makes the business of the firm unlawful.

11. Happening of certain contingencies may lead to dissolution of partnership what are those?

Subject to contract between the partners, a firm is dissolved on the happening the following of certain contingencies

1. if constituted for a fixed term, by the expiry of that term;
2. if constitute to carry out one or more adventures or undertakings, by the completion thereof;
3. by the death of a partner; and
4. by the adjudication of a partner as an insolvent.

12. What are the grounds of dissolution?

A firm may be dissolved on any of the following grounds:

1. **by agreement:** A firm may be dissolved any time with the consent of all the partners of the firm. Partnership is created by contract; it can also be terminated by contract.
2. **Compulsory dissolution:** A firm is dissolved—
   (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
   (b) by the happening of any event which makes the business of the firm unlawful.
3. **On the Happening of Certain Contingencies:** Subject to contract between the partners, a firm is dissolved—
   (a) if constituted for a fixed term, by the expiry of that term;
   (b) if constitute to carry out one or more adventures or undertakings, by the completion thereof;
   (c) by the death of a partner; and
   (d) by the adjudication of a partner as an insolvent.
4. **By Notice:** Where the partnership is at will, the firm may be dissolved by any partner giving notice in written to all other partners of his intention to dissolve the firm.
5. **Dissolution by the Court:** At the suit of a partner the court may dissolved a firm on any one of the following grounds:
   (a) **Insanity:** If a partner has become of unsound mind. The suit for dissolution in this case can be filed by the next friend of the insane partner or by other partner.
   (b) **Permanent Incapacity:** If a partner becomes permanently incapable of performing his duties as a partner. The suit for this case must be brought by a partner other than the person who has become incapable.
   (c) **Guilty Conduct:** If a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.
   (d) **Persistent Breach of Agreement:** If a partner willfully and persistently commits breach of the partnership agreement regarding management, or otherwise conducts himself in such a way that it is not reasonably practicable for the other partners to carry on business in partnership with him.
   (e) **Transfer of Whole interest:** If a partner has transferred the whole of his interest in the firm to an outsider or has allowed his interest to be sold in execution of a decree.
   (f) **Loss:** If the Business of the firm cannot be carried on except at a loss.

Just and Equitable Clause: If the court considers it just and equitable to dissolve the firm.

13. Can an outgoing partner carry guarantee?

A continuing guarantee given to a firm or to a third party in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

14. What are the ten Important elements of a stand and partnership deed?

The important elements of a stand and partnership deed are as follows:

1. Name and address of the partners
2. Firm name
3. Nature of business
4. Place of business and business address
5. Duration of the partnership and mode of dissolution
6. The amount of capital to be contributed by each partner
7. The mode of management
8. The powers of the partners
9. Terms on which a partner can retire
10. Expulsion of partners
11. Introduction of new partners

15. What do you mean by Partnership?

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

16. Who can be a partner?

Under the Partnership Act, a person may be partner if he has the capacity to enter into a contract. From the purposes of the Partnership Act, the term 'person' does not include a partnership or a limited company. Thus a company P cannot form a partnership with a company Q. Similarly, a firm X cannot form a partnership with firm Y. But all the partners of firm X and all the partners of firm Y can form a single partnership, subject to the rules regarding the number of partners. However, it is assumed that except the followings all are eligible to become a partner of a firm:

(a) **Minor:** A minor cannot be a partner. But in an existing partnership, a minor can be admitted into a firm if all the partners of the firm agree. Such minor gets all the benefits of the partnership.

(b) **Person of unsound mind:** A person who is of unsound mind cannot become a partner.

(c) **Insolvent:** A person, who is adjudged insolvent by the court, cannot become a partner.

(d) **Company:** In a Company the capacity to enter into contract is determined by the Memorandum and Articles of the Association of the Company. The liability of the members of a firm under the Partnership Act, for the debts of the firm, is unlimited. But a company cannot incur unlimited liability. Therefore a company cannot become a partner of a firm.

(e) **An alien enemy:** An alien enemy cannot enter into a contract of partnership with a citizen of the country.

(f) **Ambassador:** Any foreign ambassador in Bangladesh cannot enter into a partnership in the country.

17. What is the legal status of a Firm?

Under common law legal systems, the basic form of partnership is a general partnership, in which all partners manage the business and are personally liable for its debts. Two other forms which have developed in most countries are the limited partnership (LP), in which certain limited partners relinquish their ability to manage the business in exchange for limited liability for the partnership's debts, and the limited liability partnership (LLP), in which all partners have some degree of limited liability.

There are two types of partners. General partners have an obligation of strict liability to third parties injured by the Partnership. General partners may have joint liability or joint and several liability depending upon circumstances. The liability of limited partners is limited to their investment in the partnership.

A silent partner is one who still shares in the profits and losses of the business, but who is not involved in its management, and/or whose association with the business is not publicly known; these partners usually provide capital in the expectation of a return on their investment.

18. What are the consequences of dissolution?

1. **Acts done after dissolution:** Until public notice is given of the dissolution, the partners continue to be liable to third parties for all acts done in connection with the affairs of the firm.
2. **Winding up:** Partner is liable to winding up by the following way:
   a. Meet up liabilities by sale of properties; and
   b. Meet up liabilities of 3rd parties at first

   If any deficit arise in doing the above work partners will bear that according to the terms of agreement of partnership. And

   If any surplus arises they have right to take the same in proportion of their respective share.
3. **Continuing authority of partners for purposes of winding up:** Partners have right to-
   a. complete pending work regarding winding up; and
   b. complete incomplete transactions.

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4. **Profit earned after dissolution:** If any partner earns any profit from any transaction connected with the firm after its dissolution, he must share it with the other partners and the legal representative of the deceased partners.
5. **Returns of premium:** Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term, he shall be entitled to repayment of the premium.
6. **Right to restrain from use of firm's name:** Every partner has right to restrain any other partner from using firm's goodwill. But if a partner has purchased the goodwill of the firm, he can use the firm's name.

19. What are the modes of setting accounts upon dissolution?

Subject to agreement between the partners following rules are laid down for settlement of accounts:

1. Losses are to be paid first out of profits, next out of capital, and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits. Capital deficiency is to be treated as loss and is to be borne by the partners in proportion to the profit sharing ratio.
2. The assets of the firm including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:
   (a) In paying the debts of the firm to third parties;
   (b) In paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
   (c) In paying to each partner ratably what is due to him on account of capital; and
   (d) The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
   (e) If a partner becomes insolvent or otherwise cannot pay his share of the contribution, the capital of the solvent partners cannot be returned in full. In this case, the solvent partners must share ratably the available assets, i.e. the rule laid down in the English case, Garner Vs. Murray.
3. **Payment of the firm debts and of separate debts:** Where there are joint debts from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of debt of the firm, and if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

CHAPTER-06

The Bangladesh Labour Act, 2006

Syllabus: The Bangladesh Labor Act, 2006: Important Statutory Definitions: Factory, Worker, Employer, Commercial Establishment, Industrial Establishment; *Summary of major provisions on:* Employment and Conditions of Services, Employment of Adolescent, Provisions of Health, Hygiene, Safety and Welfare Measures, Working hours and leave, Trade Union and Industrial relations, Dispute resolution, Workers' Participation in Companies' Profits.

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6.1 Introduction
(সূচনা)

The Bangladesh Labour Act, 2006 has been an umbrella under which an individual could find all the vital employment rights. This is one of the key pieces of legislations as it deals with workforce and applies to every organization. This has a wide-ranging applicability and deals with very important issue of a person's life, i.e. his employment. Amalgamating several scattered legislations and legal provisions on employment, labour and industrial relations, the BLA has become one-stop solution to almost all employment dilemmas insofar as a 'worker' is concerned. It has brought together legal provisions on conditions of employment, severance from employment, leave entitlements, worker's entitlement following workplace accident and disability, health, hygiene and safety, provisions for dock, tea plantation workers, provisions on benefits such as provident fund (PF) and workers' participation in company's profit (WPCP), etc., all in a single legislation. This has saved law practitioners' time in researching while advising just as much as it has saved employers' time in deciphering their duties and obligations towards employees.

6.2 Original Act
(মূল আইন)

THE BANGLADESH LABOUR ACT, 2006
ACT NO. XLII OF 2006
[11 October, 2006]

An Act to amend and consolidate the laws relating to employment of workers, relations between workers and employers, determination of minimum rates of wages, payment of wages, compensation for injuries to workers during working hours, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions and environment of workers and apprenticeship and matters ancillary thereto.

WHEREAS it is expedient and necessary to amend and consolidate the laws relating to employment of workers, relations between workers and employers, determination of minimum rates of wages, payment of wages, compensation for injuries to workers during working hours, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions and environment of workers and apprenticeship and matters ancillary thereto;

It is hereby enacted as follows:

6.3 Some Important Definition as Described in the Law
(আইনে বর্ণিত কতিপয় গুরুত্বপূর্ণ সংজ্ঞা)

The Bangladesh Labour Act, 2006 has been an umbrella under which an individual could find all the vital employment rights.

1. **Manufacturing Process (উৎপাদন প্রক্রিয়া):**

(2) "manufacturing process" means any of the following processes, namely:

(a) making, altering, repairing, ornamenting, painting, washing, finishing or fining, packing or otherwise treating any articles or substance for the purpose of its use, sale, transport, distribution, display or disposal;

(b) process of pumping oil, gas, water, sewerage or any other liquid sweepings;

(c) generating, transforming or transmitting power or gas;

(d) constructing, reconstructing, repairing, finishing or fining or breaking up of ships or vessels; or

(e) printing by letterpress, lithography, photogravure, computer, photocompose, offset or other similar process or book-binding which is carried on by way of trade or for the purpose of gain or incidental to another business so carried on;

2. **Factory (কারখানা):**

(7) "factory" means any precincts or premises where five or more workers ordinarily work on any day of the year and in any part of which a manufacturing process is carried on, but does not include a mine;

3. **Gratuity (গ্র্যাচুইটি):**

(10) "gratuity" means the wages of at least 30 (thirty) days, at the rate of the wages a worker received last, for every completed year of his service or for a period of his service exceeding 06(six) months or, in the case of his service of more than 10 (ten) years, the wages of 45 (forty five) days at the rate of the wages he received last, which is payable to such worker on the termination of his employment; this shall be in addition to any compensation, or wages or allowance in lieu of a notice, payable by an employer because of termination of employment of a worker on different grounds under this Act;]

4. **Public utility service (জনকল্যাণমূলক সার্ভিস):**

(12) **"public utility service"** means

(a) generation, production or supply of electricity, gas, oil or water for the members of the public,

(b) sewerage or sanitation system for the members of the public,

Clause (8A) was inserted by section 3 i(a) of the Bangladesh Labour (Amendment) Act, 2013 (Act No. XXX of 2013). [2] Clause (9A) was inserted by section 3 (b) of the Bangladesh Labour (Amendment) Act, 2013 (Act No. XXX of 2013). [3] Clause (10) was substituted by section 3 (c) of the Bangladesh Labour (Amendment) Act, 2013 (Act No. XXX of 2013).

(c) hospital and ambulance service,

(d) fire-fighting service,

(e) postal, telegraph and telephone service,

(f) railways, airways, road and water transport,

(g) ports,

(h) watch and ward staff and security service of any establishment,

(i) oxygen acetylene, and

(j) banking;

5. **Transmission machinery (ট্রান্সমিশন যন্ত্রপাতি):**

(14) "transmission machinery" means any shaft, wheel, drum, pulley, system of pulleys, couplings, clutch, driving belt or any other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or plant;

6. **Trade Union (ট্রেড ইউনিয়ন):**

(15) "trade union" means the trade union of workers or employers formed and registered under Chapter XIII and includes a federation of trade unions;

7. **Discharge (ডিসচার্জ):**

(17) **"discharge"** means the termination of service of a worker by the employer for reasons of physical or mental incapacity or continued ill-health;

8. **go-slow (ডিমেতালের কাজ):**

(18) **"go-slow"** means an organized, deliberate and intentional slowing down of normal output of work by a group of workers, and which is not due to any mechanical defect, breakdown of machinery, failure or defect in power supply or failure in the supply of ordinary materials and spare parts of machinery;

9. **Shop (দোকান):**

(21) "shop" means any premises or precincts used wholly or in part for the whole-sale or retail sale of commodities or articles either for cash or credit, or where any service is rendered to a customer, and includes an office, storeroom, go down, or workplace, whether in the same premises or elsewhere, mainly used in connection with such trade or business, and includes such other premises or precincts as the Government may, by notification in the official Gazette, declare to be a shop for the purposes of this Act;

10. **Strike (ধর্মঘট):**

(22) "strike" means cessation of work or refusal to work jointly by a group of workers employed in any establishment or refusal to accept work or continue to work unanimously by a body of workers employed therein;

11. **Administrative Worker (প্রশাসনিক শ্রমিক):**

(28) "administrative worker" means a person, except a working journalist or a newspaper printing press worker, who is employed on a whole time basis in, or in relation to, any newspaper establishment in any capacity;

12. **Shift (পালা):**

(29) "shift" means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such periods;

13. **Establishment (প্রতিষ্ঠান):**

(31) "establishment" means any shop, commercial establishment, [1][transport,] industrial establishment or premises or precincts where workers are employed for the purpose of carrying on any industry;

14. **Dismissal (বরখাস্ত):**

(39) "dismissal" means the termination of service of a worker by the employer for misconduct;

15. Commercial Establishment (বাণিজ্যিক প্রতিষ্ঠান):

(41) "commercial establishment" means an establishment in which the business of advertising, commission or forwarding is carried on or which is a commercial agency, and also includes the following establishments, namely:

(a) the clerical department of a factory or of any industrial or commercial establishment;

(b) the office-establishment of a person who for the purpose of implementing a contract with any commercial or industrial establishment employs workers;

(c) a unit of a joint-stock company;

(d) any insurance company, banking company or bank;

(e) any office of broker;

(f) any stock exchange;

(g) any club, hotel, restaurant or eating house;

(h) any cinema or theatre;

(i) any other establishment which the Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act;

16. illegal strike (বে-আইনী ধর্মঘট):

(43) "illegal strike" means a strike declared, commenced or continued [2][in contravention of]the provisions of Chapter XIV;

17. illegal lock-out (বে-আইনী লকআউট):

(44) "illegal lock-out" means a lock-out declared, commenced or continued [3][in contravention of] the provisions of Chapter XIV;

18. Wages (মজুরি):

(45) "wages" means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include the following money, namely:

(a) the value of any house accommodation, light, water, medical facilities or other amenity or the value of any service excluded by general or special order by the Government;

(b) any subscription paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to a worker to defray special expenses entitled to him by the nature of his employment;

19. Employer (মালিক):

(49) "employer", in relation to an establishment, means any person who employs workers therein, and also includes the following persons, namely:

(a) an heir, guardian, or successor in assignment or legal representative of such person;

(b) manager or any person responsible for the management or control of the establishment;

(c) in the case of an establishment run by or under the authority of the Government, an authority appointed in this behalf or where no such authority exists, the head of the Ministry or Division concerned;

(d) in the case of an establishment run by or on behalf of a local authority, an officer appointed in this behalf or where no such officer exists, the Chief Executive Officer of that authority;

(e) in the case of any other establishment, the owner of such establishment and every Director, Manager, Secretary, agent or any officer or person concerned with the management of the affairs such establishment;

(f) in the case of an establishment under the possession of any person other than the owner, the person in possession of that establishment or the person who is in ultimate control over the affairs of the establishment or the manager or any competent officer who is connected with the management of such activities;

20. Machinery (যন্ত্রপাতি):

(50) "machinery" includes prime movers, transmission machinery and other appliance whereby power is generated, transformed, transmitted or applied;

21. Collective bargaining agent (যৌথ দরকষাকষি প্রতিনিধি):

(52) "collective bargaining agent [CBA]" means a trade union or federation of trade unions of an establishment or group of establishments which is an agent of the workers [CBA] for collective bargaining in such establishment or group of establishments under Chapter XIII;

22. Lock-out (লক-আউট):

(57) "lock-out" means the closing of a place of work or a part of such place, or the suspension of work therein, wholly or partly, by an employer,

or refusal, absolute or conditional, by an employer to continue [1][allow to work by] any number of workers employed by him, where such closing, suspension or refusal occurs in connection with any industrial dispute or is intended for the purpose of compelling workers to accept certain terms and conditions of employment;

23. Lay-off (লে-অফ):

(58) "lay-off" means the failure, refusal or inability of an employer to give employment to a worker on account of shortage of coal, power or raw material or the accumulation of stock or the break-down of machinery;

24. Lay-off (লে-অফ):

(61) "industrial establishment" means any workshop, manufacturing process or any other establishment where any article is produced, adapted, processed or manufactured, or where the work of making, altering, repairing, ornamenting, finishing or fining or packing or otherwise treating any article or substance for the purpose of its use, transport, sale, delivery or disposal, is carried on or such other establishments as the Government may, by notification in the official Gazette, declare to be an industrial establishment for the purpose of this Act, and includes the following establishments, namely:

(a) road transport, or railway transport service,
(b) river transport service,
(c) air transport,
(d) dock, quay or jetty,
(e) mine, quarry, gas field or oil field,
(f) plantation,
(g) factory,
(h) newspaper establishment,
(i) establishment of a contractor or sub-contractor established for the purpose of construction, reconstruction, repair, alteration or demolition of any building, road, tunnel, drain, canal or bridge, ship-building, ship-breaking or loading or unloading of cargo into vessel or carrying thereof;

25. Industrial dispute (শিল্প বিরোধ):

(62) "industrial dispute" means any dispute or difference of opinion between employers and employers, between employers and workers or between workers and workers in respect of appointment or conditions of service or conditions of work or environment of work of any person;

26. Child (শিশু):

(63) "child" means a person who has not completed 14th (fourteenth) years of age;

27. Worker (শ্রমিক):

(65) "worker" means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, [1][by whatever name he is called,] to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative [2][or supervisory] capacity;

Employment and Terms of Service
নিয়োগ ও চাকরির শর্তাবলি

6.4 Guiding Condition of Service
(চাকরির শর্তাবলি পরিচালনা)

3. Conditions of employment (কর্মীদের শর্তাবলি):

(1) In every establishment employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this chapter:

Provided that any establishment may have its own rules regulating employment of workers, but no such rules shall be less favorable to any worker than the provisions of this chapter.

(2) The service rules in any establishment as mentioned in the proviso to sub-section (1) shall be submitted for approval by the employer of such establishment to the chief inspector who shall, within six months of the receipt thereof make such order therein as he deems fit.

(3) No service rules as mentioned in sub-section (2) shall be put into effect except with the approval of the chief Inspector.

(4) Any person aggrieved by the order of the chief Inspector may, within thirty days of the receipt of the order, may prefer appeal to the Government and the order of the Government on such appeal shall be final.

(5) Nothing provided in sub-section (2) shall apply to an establishment which is owned by or under management or control the Government.

6.5 Classification of Workers and Period Probation
(শ্রমিকগণের শ্রেণিবিভাগ এবং শিক্ষানবিশীকাল)

4. Classification of workers and period probation (শ্রমিকগণের শ্রেণিবিভাগ এবং শিক্ষানবিশীকাল):

(1) Workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work; namely:

(a) apprentice,

(b) badli,

(c) casual,

(d) temporary,

(e) probationer, and

(f) permanent.

(2) A worker shall be called an apprentice if he is employed in an establishment as a learner, and is paid an allowance during the period of his training.

(3) A worker shall be called a badli if he is employed in an establishment in the post of a permanent worker or of a probationer during the period who is temporarily absent.

(4) A worker shall be called a casual worker if his employment in an establishment is of casual nature.

(5) A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of temporary nature, and is likely to be finished within a limited period.

(6) A worker shall be called a probationer if he is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation in the establishment.

(7) A worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactory completed the period of his probation in the establishment.

(8) The period of probation for a worker whose function is of clerical nature shall be six months and for other workers such period shall be three month:

Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances, it has not been possible to determine the quality of his work within the first three months' period of his probation.

(9) If any worker, whose service has been terminated during his probationary period, including the extended period, is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.

(10) If a permanent worker is employed as a probationer in a new post, he may at any time during the probationary period, be reverted to his old permanent post.

6.6 Provisions Regarding Service book
(সার্ভিস বই সংক্রান্ত বিধান)

6. Arranging Service book (সার্ভিস বইয়ের ব্যবস্থা):

(1) Every employer shall, at his own cost, provide a service book for every worker employed by him.

(2) Such service book shall be kept in the custody of the employer.

(3) Before employing a worker, the employer shall require from him the previous service book if the worker claims that he has been previously in employment under any other employer.

(4) If such worker has any service book, it shall be handed over to the new employer by him and shall be kept in the custody of the employer, for which a receipt shall be given to him.

(5) If such worker has no service book, a service book shall be provided under sub-section (1)

(6) If the worker desires to keep and maintain a duplicate copy of his service book, he may do it at his own cost.

(7) The employer shall hand over the service book to the worker on the termination of the workers' service with him.

(8) If the service book handed over to the worker or the duplicate thereof maintained by him is lost by the worker, the employer shall provide him with a duplicate service book at the cost of the worker.

(9) Nothing in this section shall apply to an apprentice, badli or casual worker."

7. Form of service Book (সার্ভিস বইয়ের ফরম):

(1) The service book shall be of such size and in such form as may be prescribed and photograph of the worker shall be affixed to it.

(2) The service book shall contain the following particulars, namely:

(a) name of the worker, name of mother and father and address of the worker, (in appropriate case name of husband/ wife shall be written)

(b) date of birth,

(c) particulars necessary for identification,

(d) name and address of the employer under whom previously employed, if any,

(e) period of employment,

(f) occupation or designation,

(g) wages and allowance, if any,

(h) leave availed, and

(i) conduct of the worker.

8. Entries in the service book (সার্ভিস বইয়ে অন্তর্ভুক্তি): The employer shall at the commencement of the employment and

during the continuance of the same, make such entries therein from time to this as are required by this chapter and the Rules and both the employer and the worker shall sign the entries as they are made.

6.7 Register of Workers and Supply of Tickets and Cards (শ্রমিক রেজিস্টার এবং টিকেট ও কার্ড সরবরাহ)

9. Register of workers and supply of tickets and cards (শ্রমিক রেজিস্টার এবং টিকেট ও কার্ড সরবরাহ):

(1) The employer of every establishment shall maintain a register of workers, to be available to the Inspector at all times during working hours.

(2) The register of workers shall contain the following:

(a) the name and date of birth of each worker in the establishment;

(b) date of appointment;

(c) the nature of his work;

(d) the periods of work fixed for him;

(e) the intervals for rest and meals to which he is entitled;

(f) the days of rest to which he is entitled;

(g) the group, if any, in which he is included;

(h) where his group works on shifts, the relay to which he is allotted; and

(i) such other particulars as may be prescribed by rules;

(3) If the Inspector is of opinion that any muster roll or register maintained a part of the routine of an establishment gives in respect of all or any of the workers in the establishment the particulars required under sub-section (2), he may, by order in writing, direct that such muster roll or register shall, to the corresponding extent, be maintained in place of, and be treated as, the register of workers, in that establishment.

(4) The Government may make rules prescribing the form of the register of workers, the manner in which it shall be maintained and the period for which it shall be preserved.

(5) The employer shall supply Tickets or cards to every worker in the following manner:

(a) every permanent worker shall be provided with a permanent departmental ticket showing his number;

(b) every bodli worker shall be provided with a badli card on which shall be entered the day on which he has worked and which shall be surrendered if he obtains permanent employment.

(c) every temporary worker shall be provided with a temporary ticket which shall be surrendered on his leaving the job or gating a permanent employment;

(d) every casual worker shall be provided with a casual card on which shall be entered the days on which he has worked in the establishment; and

(e) every apprentice shall be provided with an apprentice card which shall be surrendered if he obtains permanent employment or if he leaves his training.

6.8 Procedure for Leave
(শ্রমিকদের ছুটির পদ্ধতি)

10. Procedure for leave (শ্রমিকদের ছুটির পদ্ধতি):

(1) A worker who desires to obtain leave of absence shall apply to the employer for the same in writing stating his leave address therein.

(2) The employer or his authoresses officer shall issue orders on the application whthin seen days of the application or two days prior to the commencement of leave applied for, whichever is earlier; Provided that if due to urgent reasons the leave applied for is to commence on the date of application or within three days thereof the order shall be given on the same day.

(3) If the leave asked for is granted, a leave pass shall be issued to the worker.

(4) If the leave asked for is refused or postponed the fact of such refusal or postponement, and the reasons thereof shall be communicated to the worker before the date on which the leave was expected to be commenced. and shall also be recorded in a register to be maintained by the employer for the purpose.

(5) If the worker, after convincing of leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable send a written reply either granting or refusing extension of leave to the worker to his leave-address.

6.9 Provisions Regarding Stoppage of Works
(কাজ বন্ধ রাখা সংক্রান্ত বিধানসমূহ)

12. Stoppage of work (কাজ বন্ধ রাখা):

(1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery, or stoppage of power supply, epidemics, civil commotion or any other cause beyond his control, stop any section or sections of the establishment, wholly or partly for such period as the cause for such stoppage continues to exist.

(2) In the event of such stoppage occurring at any time beyond working hours, the employer shall notify the workers affected, by notice posted on the notice board in the section or department concerned or at a conspicuous place in such establishment before the work is due to begin next.

(3) In the notice mentioned in sub-section (2) direction shall be given indication as to when the work will be resumed and whether such workers are to remain at their place of work at any time before the actual resumption.

(4) In the event of such stoppage occurring at any time during working hours, the workers affected shall be notified, as soon as practicable, in the manner specified in sub-section (2) indicating as to when the work will be resumed and whether such workers are to leave or remain at their place of work.

(5) In the case where workers have been directed to stay at their place of work following such stoppage, the workers so detained may not be paid for the period of such detention if it does not exceed one hour, and the workers so detained shall be paid wages for the whole period of such detention if it exceeds one hour.

(6) If the period of stoppage of work does not exceed one working day, a worker, unless entitled to wages under sub-section (5), may not be paid any wages.

(7) If the period of stoppage of work continues for more than a working day, a worker affected, other than a casual or badli worker, shall be paid wages for day or day by which it will exceed one working day.

(8) If the period of stoppage of work extends beyond three working days, the workers may be laid off in accordance with the provisions of section 16.

(9) A lay-off mentioned in sub-section (8) shall be effective from the day of stoppage of work and any wage paid to a worker for the first three days may be adjusted against the compensation payable for such subsequent layoff.

(10) For the piece-rate workers affected, their average daily earning in the previous month shall be taken to be the daily wage for the purpose of the sub-section.

6.10 Provisions Regarding Closure of Establishment
(প্রতিষ্ঠান বন্ধ রাখা সংক্রান্ত বিধানসমূহ)

13. Closure of Establishment (প্রতিষ্ঠান বন্ধ রাখা):

(1) The employer may, in the event of an illegal strike by any section or department of any establishment, close down either wholly or partly such section or department and the workers participated in the illegal strike hall not be paid any wages for such closure.

(2) Where by reason of closing down of any section or department of any establishment under subsection (1) any other section or department is so affected that it is not possible to keep that section or department open, that section or department may also be closed down and the workers affected thereby shall be paid wages as in the case of lay-off for a period of three days and thereafter they may not be paid any wages for such closure.

(3) The fact of such closure shall be notified by the employer, as soon as practicable, by notice posted on the notice board in the section or department concerned or at a conspicuous place in the establishment and the fact of resumption of work, following such closure, shall likewise be notified.

6.11 Rights of Laid-off Workers for Compensation
(লে-অফকৃত শ্রমিকগণের ক্ষতিপূরণের অধিকার)

16. Right of laid-off workers for compensation :

(1) Whenever a worker, other than a badli or casual worker, whose name is borne on the muster-rolls of an establishment and who has completed not less than one year of continuous service under the employer is laid-off, he shall be paid compensation by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene.

(2) The amount of compensation as mentioned in sub-section (1) shall be equal to half of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off.

(3) A badli worker whose name is borne on the muster-rolls of an establishment shall cease to be regarded as 'badli' for the purpose of this section, if he has completed one year of continuous service in the establishment.

(4) No worker shall, unless there is an agreement to the contrary between the worker and the employer, be entitled to the payment of compensation under this section for more than forty-five days during any calendar year.

(5) Notwithstanding anything contained in sub-section (4), if during a calendar year a worker is laid-off for more than forty-five days, whether continuously or intermittently, and the lay off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between the worker and the employer, be paid compensation for all the days comprised in every subsequent period of lay-off for fifteen days or more.

(6) The amount of compensation as mentioned in sub-section (5) shall be equal to one-fourth of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any.

(7) In any case where, during a calendar year, a worker is to be laid off after the first forty-five days as aforesaid, for any continuous period of fifteen days or more, the employer may, instead o layingoff such a worker, retrench him under section 20.

6.12 Provisions Regarding Retrenchment of Workers
(শ্রমিক ছাঁটাই সংক্রান্ত বিধানসমূহ)

20. Retrenchment:

(1) A worker employed in an establishment may be retrenched from service on the ground of redundancy.

(2) No worker who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless-

(a) The worker has been given one month's notice in writing, indicating the reasons for retrenchment, or the worker has been paid in lieu of such notice, wages for the period of notice;

(b) a copy of the notice is sent to the chief Inspector or any other officer authorized by him and also to the collective bargaining agent in the establishment, if any; and

(c) he has been paid, compensation which shall be equivalent to thirty days wages or gratuity for every completed year of service if any, whichever is higher.

(3) Notwithstanding anything contained in sub-section (2), in the case of retrenchment of a worker under section 16(7), no notice as mentioned in sub-section (2) (a) shall be necessary; but the worker so retrenched, shall be paid fifteen days wages in addition to the compensation or gratuity, as the case may be, which may be payable to him under sub-section (2) (c).

(4) Where any worker belonging to a particular category of workers is to be retrenched, the employer shall, in the absence of any agreement between him and the worker in this behalf, retrench the worker who was the last person to be employed in that category.

6.13 Discharge from Service of Workers
(শ্রমিকদের চাকরি হতে ডিসচার্জ বা অব্যাহতি)

22. Discharge from service:

(1) A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner.

(2) If a worker who has completed not less than one year of continuous service is so discharged, he shall be paid by the employer compensation at the rate of thirty days wages for every completed year of service, or gratuity, if any whichever is higher.

6.14 Punishment for Conviction and Misconduct
(অসদাচরণ এবং দণ্ড-প্রাপ্তির ক্ষেত্রে শাস্তি)

23. Punishment for conviction and misconduct:

(1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof if he is:

(a) convicted for any criminal offence ; or

(b) he is found guilty of misconduct under section 24.

(2) Any worker found guilty of misconduct may, instead of being dismissed under sub-section (1), in consideration of any extenuating circumstances, be awarded any of the following punishments, namely:

(a) Removal;

(b) Reduction to a lower post, grade or scale of pay for a period not exceeding one year;

(c) Stoppage of promotion for a period not exceeding one year;

(d) Withholding of increment for a period not exceeding one year;

(e) fine;

(f) suspension without wages and subsistence allowance for a period not exceeding seven days;

(g) censure or warning.

(3) A worker who is dismissed under sub-section (1) or removed as a measure of punishment undersub-section (2) (a) shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or gratuity, if any, whichever is higher;

Provided that no compensation shall be payable if the worker is dismissed for misconduct as specified in sub-section (4) (b)

(4) The following acts and omissions shall be treated as misconduct:

(a) willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior;

(b) theft, fraud or dishonesty in connection with the employer's business or property;

(c) taking for giving bribe in connection with his or any other worker's employment under the employer;

(d) habitual late attendance;

(f) habitual breach of any law or rule or regulation applicable to the establishment;

(g) riotous or disorderly behavior in the establishment, or any act subversive of discipline;

(h) habitual negligence work;

(i) habitual breach of any rule of employment, including conduct or discipline, approved by the chief Inspector;

(j) falsifying, tampering with, damaging or causing loss of employers official records.

(5) If a worker who is dismissed from service under sub-section (1) (a), is acquitted on an appeal, he will be reinstated to his original post without back wages or to any new post suitable to him; and if such reinstatement is not possible, he shall be paid compensation at the rate payable to a person on discharge excluding the compensation already paid to him for his dismissal.

6.15 Procedure for Punishment of Workers
(শ্রমিকদের শাস্তিদানের পদ্ধতি)

24. Procedure for punishment:

(1) No order of punishment under section 23 shall be made against a worker unless-
(a) the allegations against him are recorded in writing;
(b) he is given a copy thereof and not less than seven day's time to explain;
(c) he is given an opportunity of being heard;
(d) he is found guilty, after enquiry;
(e) the employer or the manager approves of such order.

(2) A worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any court, the period of such suspension shall not exceed sixty days;

Provided that during the period of such suspension, a worker shall be paid by his employer a subsistence allowance equivalent to half of his average wages, and dearness allowance and ad-hoc or interim pay, if any.

(3) An order of suspension shall be in writing and shall take effect immediately on delivery to the worker.

(4) In an enquiry the accused worker may be helped by any person nominated by him who is employed in the establishment.

(5) If in an enquiry, any oral evidence is given on behalf of any party, the party against whom the evidence is given may cross examine the witness.

(6) If, on enquiry, a worker is found guilty and is punished under section 23 (1), he shall not be entitled to his wages for any period of suspension but shall be entitled to the subsistence allowance for such period.

(7) If the charges against the worker is not proved in the enquiry, he shall be deemed to have been on duty for the period of suspension for enquiry, if any and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

(8) In cases of punishment, a copy of the order infliction such punishment shall be supplied to the worker concerned.

(9) If a worker refuses to accept any notice, letter, charge-sheet, order or any other document addressed to him by the employer, it shall be deemed that such notice, letter, charge-sheet, order or the document has been delivered to him, if a copy of the same has been exhibited on the notice pored and another copy has been sent to the address of the worker as available from the records of the employer, by registered post.

(10) In awarding punishment, the employer shall take into account the previous record of the worker concerned, the gravity of the misconduct, and any other that may exist.

6.16 Special Provisions Relating to Fine
(জরিমানা সম্পর্কে বিশেষ বিধান)

25. Special provisions relating to fine:

(1) No fine exceeding one-tenth of the wages payable to a worker in respect of a wage-period may be imposed in any one wage-period on any worker.

(2) No fine shall be imposed on a worker who is under the age of fifteen years.

(3) No fine imposed on any worker shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.

(4) Every fine shall be deemed to have been imposed or the day of the commission of the offence in respect of which it was imposed.

(5) All fines and all realizations there of shall be recorded in a prescribed register to be kept by the employer and all such realizations shall be speeded only to such purposes beneficial to the worker employed in the establishment.

6.17 Termination of Employment by Employers otherwise than by Dismissal, etc.
(বরখাস্ত, ইত্যাদি ব্যতীত অন্যভাবে মালিক কর্তৃক শ্রমিকের চাকরির অবসান)

26. Termination of employment by employers otherwise than by dismissal, etc.:

(1) The employment of a permanent worker may be terminated by the employer, otherwise, than in the manner provided else-where in this chapter, by giving to him in writing-

(a) one hundred and twenty days' notice, if he is a monthly rated worker;

(b) sixty days' notice, in case of other worker.

(2) The employment of a temporary worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this chapter, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving to him in writing-

(a) thirty day's notice, if he is a monthly rated worker;

(b) fourteen days notice, in case of other worker.

(3) Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying to the worker, wages in lieu of the notice, which is enquired to be given under subsection

(1) or (2), as the case may be.

(4) Where the employment of a permanent worker is terminated under this section, he shall be paid by the employer compensation at the rate of thirty day's wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

6.18 Retirement of Worker
(শ্রমিকের অবসর গ্রহণ)

28. Retirement of worker:

(1) A worker employed in any establishment shall, notwithstanding anything contained elsewhere in this chapter, retire from employment ipso facto on the completion of the fifty-seventh year of his age.

(2) For the purpose of counting age of the worker under this section the date of birth recoded in the service book of the concerned worker shall be the conclusive proof.

(3) Every retiring worker under the provisions of section 26(4) or under own service rule of the establishment, shall be paid his benefits due to him.

(4) Appropriate authority, if thinks proper, may afterwards, employ the retiring worker under contract.

6.19 Grievance Procedure
(অভিযোগ পদ্ধতি)

33. Grievance procedure:

(1) Any worker, including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment, who has grievance in respect of any matter covered under this chapter, and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance. Provided that if the employer acknowledges receipt of the grievance, in that case the service by registered post shall not be essential.

(2) The employer shall within fifteen days of receipt of such grievance, enquire into the matter, give the worker an opportunity of being heard and communicate his decision, in writing to him.

(3) If the employer fails to give a decision under sub-section (2) or if the worker is dissatisfied with such decision, he may make a complain in writing to the Labour court within thirty days from the last date under sub-section (2) or within thirty days from the date of the decision, as the case may be.

(4) The Labour court shall, on receipt of the complaint hear the parties after giving notice to them and make such orders as it may deem just and proper.

(5) The Labour court, may amongst other relief, direct reinstatement of the complainant in service, either with or without back wages and convert the order of dismissal, removal or discharge to any other Lesser punishment specified in section 23(2).

(6) Any person aggrieved by an order of the Labour court, may, within thirty days of the order, prefer an appeal to the tribunal, and the decision of the Tribunal on such appeal shall be final.

(7) No court-fees shall be payable for lodging complaint or appeal under this section.

(8) No complaint under this section shall amount to prosecution under this Act.

(9) Notwithstanding anything contained in this section, no complaint shall lie against an order of termination of employment of a worker under section 26, unless such order is alleged to have been made for his trade union activities or passed motivated or unless the worker concerned has been deprived of the benefits specified in that section.

Employment of Adolescent

কিশোর শ্রমিক নিয়োগ

6.20 Provisions Regarding the Appointment of Children & Adolescent (শিশু ও কিশোর শ্রমিক নিয়োগ সংক্রান্ত আইনের বিধানসমূহ)

34. Prohibition of employment of children and adolescent (শিশু ও কিশোর শ্রমিক নিয়োগ সংক্রান্ত আইনের বিধানসমূহ):

(1) No child shall be employed or permitted to work in any occupation or establishment.

(2) No adolescent shall be employed or permitted to work in any occupation or establishment unless-

(a) a certificate of fitness in the prescribed form and granted to him by a registered medical practitioner is in the custody of the employer ; and

(b) he carries , while at work, a token giving a reference to such certificate.

(3) Nothing in this sub-section (2), shall apply to the employment of any adolescent in any occupation or establishment either as an apprentice or or the purpose or receiving vocational training therein:

(4) The Government may, where it is of opinion that an emergency has arisen and the public interest so requires, by notification in the official Gazette, declare that the provisions of this sub-section (2), shall not be in operation for such period as may be specified in the notification.

39. Restriction of employment of adolescent in certain work (কতিপয় কাজে কিশোর নিয়োগে বাধা):

No adolescent shall be allowed in any establishment to clean, lubricate of adjust any part of machinery while that part is in motion or to work between moving parts, of any machinery which is in motion.

40. Employment of adolescent on dangerous machines (বিপজ্জনক যন্ত্রপাতির কাজে কিশোর নিয়োগ):

(1) No adolescent shall work at any machine unless-

(a) he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and-

(b) has received sufficient training in work at the machine, or is under adequate supervision by a person who has thorough knowledge and experience of the machine,

(2) This provision shall apply to such machines as may be notified by the government to be of such a dangerous character that an adolescent ought not to work at them unless the requirements of sub-section (1) are complied with.

(3) The Government may from time to time publish in the official gazette the list such of hazardous works where, no adolescent shall be employed.

42. Prohibition of employment of adolescent in underground and under-water work (ভূগর্ভে এবং পানির নিচে কিশোর নিয়োগ নিষেধ): No adolescent shall be employed in any underground or underwater work.

6.21 Provisions Regarding the Working Hours for Adolescent (কিশোরের কাজের সময় সংক্রান্ত বিধানসমূহ)

41. Working hours for adolescent (কিশোরের কর্মঘন্টা):

(1) No adolescent shall be required or allowed to work in any factory or mine, for more than five hours in any day and thirty hours in any week;

(2) No adolescent shall be required or allowed to work in any other establishment, for more than seven hours in any day and forty-two hours in any week.

(3) No adolescent shall be required or allowed to work in any establishment between the hours of 7.00 P.M and 7.00 a.m.

(4) If an adolescent works overtime, the total number of hours worked, including overtime shall not exceed-

(a) in any factory or mine, thirty six hours in any week;

(b) in any other establishment, forty eight hours in any week.

(5) the period of work of an adolescent employed in an establishment shall be limited to two shifts which shall not overlap or spread over more than seven and a half hours each.

(6) An adolescent shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Inspector, be changed more frequently than once in a period of thirty days.

(7) The provisions of weekly holiday shall apply also to adolescent workers, and no exemption from the provisions of that section shall be granted in respect of any adolescent.

(8) No adolescent shall be required or allowed to work in more than one establishment in any day.

43. Notice of periods of work for adolescent (কিশোরের কাজের সময়ের নোটিশ):

(1) In every establishment in which adolescent are employed, there shall be displayed in the manner prescribed by rules, a notice of specified periods of work for adolescent.

(2) The periods shown in the notice under sub-section (1) shall be fixed beforehand in the manner laid down for adult workers and shall be such that adolescent working on those periods would not be working in contravention of this Act.

(3) The relevant provisions laid down for adult workers in the occupation or establishment shall also apply to the notice under sub-section (1).

(4) The Government may make rules to prescribe the form of such notice and the manner in which it shall be maintained.

44. Exception in certain cases of employment of children (কতিপয় ক্ষেত্রে শিশু শ্রমিক নিয়োগে ব্যতিক্রম):

(1) Notwithstanding anything contained in this chapter, a child who has completed twelve years of age, may be employed in such light work as not to endanger his health and development or interfere with his education; –

Provided that the hours of work of such child, where he is school going, shall be so arranged that they do not interfere with is school attendance.

(2) All provisions applicable to an adolescent workers under this chapter shall mutatis-mutandis apply to such child workers.

Health Safety System

স্বাস্থ্যরক্ষা ব্যবস্থা

6.22 Provisions Regarding the Health Safety System of Workers
(শ্রমিকের স্বাস্থ্যরক্ষা সংক্রান্ত বিধানসমূহ)

51. Cleanliness (পরিষ্কার-পরিচ্ছন্নতা): Every establishment shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

(a) Accumulation of dirt and refuge shall be removed daily by sweeping or by any other effective method from the floors and benches of work-rooms and from staircases and passage and disposed of in a suitable manner;

(b) The floor of every work-room shall be cleaned at least once in every week by washing, using disinfectant where necessary or by some other effective method;

(c) Where the floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) All inside walls and partitions, all ceilings, or tops of rooms, and walls, side and tops of passages an staircases shall:

(i) where they are painted or varnished, be repainted or re varnished at least once in every three years,

(ii) where they are painted or varnished and have smooth imperious surface, be cleaned at least once in every fourteenth months, by such methods as may be prescribed,

(iii) in any other case, be kept white-washed or color-washed and the white-washing or color washing shall be carried out at least once in every fourteen months; and

(e) The date on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

52. Ventilation and temperature (বায়ু চলাচল ও তাপমাত্রা):

(1) Effective and suitable provisions shall be made in every establishment for securing and maintaining in every work-room adequate ventilation by the circulation of fresh air;

(2) Such temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

(3) The walls and roofs, as required by sub-section (2), shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

(4) Where the nature of the work carried on in the establishment involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable, shall be taken to protect the workers there from by separating the process which produces such temperature from the work-room by insulation the hot parts or by other effective means.

(5) If it appears to the government that in any establishment or class or description of establishments excessively high temperature can be reduced by such methods as white-washing, spraying or insulating and screening outside walls or roofs or windows or by raising the level of the roof, or by insulating the roof either by an air space and double roof or by the use of insulating roof materials, or by other methods, it may prescribe such of those or those or other methods to be adopted in the establishment.

53. Dust and fume (ধূলাবালি ও ধোঁয়া):

(1) In every establishment in which, by reason of any manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, effective measures shall be taken to prevent its accumulation in any work-room and it inhalation by workers, and if any exhaust appliance is necessary for this purpose, it shall he applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any establishment no stationary internal combustion engine shall be operated unless the exhaust is conducted into open air, and no internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes there from as are likely to be injurious to the workers employed in the work-room.

54. Disposal of wastes and effluents (বর্জ্য পদার্থ অপসারণ): Effective arrangements shall be made in every establishment for disposal of wastes and effluents due to the manufacturing process carried on therein.

55. Artificial humidification (কৃত্রিম আর্দ্রকরণ):

(1) In any establishment in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(2) If it appears to an Inspector that the water used in an establishment for increasing humidity which is required to be effectively purified under sub-section (1) is not effectively purified, he may serve on the employer of the establishment an order in writing, specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

56. Overcrowding (অতিরিক্ত ভিড়):

(1) No work-room in any establishment shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of the provisions of sub-section (1), there shall be provided for every worker employed in a work-room at least 9.5 cubic metre of space in the establishment. Explanation : For the purpose of this sub-section no account shall be taken of a space which is more than 4.25 metre above the level of the floor of the room.

(3) If the chief Inspector by order in writing so requires, there shall be posted in each work-room of an establishment a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The chief Inspector may, by order in writing, exempt, subject to such conditions as he may think fit to impose, any work-room from the provisions of this section if he is satisfied that compliance there with in respect of such room is not necessary for the purpose of health f the workers employed therein.

57. Lighting arrangement (আলোর ব্যবস্থা):

(1) In every part of an establishment where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every establishment all glazed windows and skylights used for the lighting of the work-room shall be kept clean on both the outer and inner surfaces and free from obstruction as far as possible.

(3) In every establishment effective provisions shall, so far as in practicable, be made for the prevention of-

(a) glare either directly from any surface of light or by reflection from or polished surface, and

(b) the formation of shadows to such an extent as to cause eye strain or risk of accident to any worker.

58. Drinking water (পান করার পানি):

(1) In every establishment effective arrangement shall be made to provide and maintain at a suitable point conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

(2) All such points where water is supplied shall be legibly marked 'Drinking water' in Bangla.

(3) In every establishment wherein two hundred fifty or more workers are ordinarily employed, provision shall be made for cooling the drinking water during the hot weather by effective means and for distribution thereof.

(4) Where dehydration occurs in the body of workers due to work near machineries creation excessive heat, there workers shall be provided with oral re-hydration therapy.

59. Latrines and urinals (পায়খানা ও পেশাবখানা): In every establishment:

(a) sufficient latrines and urinals of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are in the establishment.

(b) such latrines and urinals shall be provided separately for male and female workers;

(c) such latrines and urinals shall be adequately lighted and ventilated;

(d) all such latrines and urinals shall be maintained in a clean and sanitary condition at all times with suitable detergents and disinfectants.

60. Dust bean and spittoon (আবর্জনা বাক্স ও পিকদানি):

(1) In every establishment there shall be provided, at convenient places, sufficient number of dust beans and spittoons which shall be maintained in a clean and hygienic condition.

(2) No person shall throw any dirt or spit within the premises of an establishment except in the dust beans and spittoons provided for the purpose.

(3) A notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

Safety

নিরাপত্তা

6.23 Provisions Regarding the Safety of Workers (শ্রমিকদের নিরাপত্তা সংক্রান্ত বিধানসমূহ)

61. Safety of building and machinery (ভবন ও যন্ত্রপাতির নিরাপত্তা):

(1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment is in such a conditions that it is dangerous to human life or safety, he may serve on the employer of the establishment an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in the establishment involves imminent danger to human life or safety, he may serve on the employer of the establishment an order in writing prohibiting its use until it has been properly repaired or altered.

62. Precaution in case of fire (অগ্নিকাণ্ড সম্পর্কে সতর্কতা অবলম্বন):

(1) Every establishment shall be provided with at least one alternative connection stairway with each floor and such means of escape in case of fire and firefighting apparatus, as may be prescribed by rules.

(2) If it appears to the inspector that any establishment is not provided with the means of escape prescribed under sub-section (1) he may serve on the employer of the establishment an order in writing specifying the measures which in his opinion, should be adopted before a date specified in the order.

(3) In every establishment the doors affording exit from any room shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, in the direction of the nearest exit from the building and no such door shall be locked or obstructed while work is being carried on in the room.

(4) In every establishment every window, or other exit affording means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in Bangla and in red letters of adequate size or by some other effective and clearly understood sign.

(5) In every establishment every window, door, or other exit affording means of escape in case of fire to every person employed therein.

(6) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the establishment.

(7) In every establishment wherein more than ten workers are ordinarily employed in any place above the ground floor, or explosive or highly inflammable materials are used or stored, effective measures shall be taken to ensure that all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(8) In factories wherein fifty or more workers and employees are employed shall arrange at least once in a year a mock fire-fighting and the employer shall maintain a book of records in this regards.

63. Fencing of machinery (যন্ত্রপাতি ঘিরে রাখা):

(1) In every establishment the following shall be securely fenced by the safeguards of substantial construction which shall be kept in position while the part of machinery required to be fenced are in mention or in use, namely:

(a) every moving part of a prime mover, and every fly wheel connected to a prime mover;

(b) the head-race and tail-race of every water wheel and water turbine;

(c) any part of a stock-bar which projects beyond the head stock of a lathe; and

(d) unless they are in such position or of such construction as to be as safe to every person employed in the establishment as they would be if they were securely fenced-

(i) every part of an electric generator,- a motor or rotary converter,

(ii) every part of transmission machinery, and

(iii) every dangerous part of any machinery:

Provided that, for the purpose of determining whether any part of machinery is safe as aforesaid, account shall not be taken of any occasion when it being necessary to make an examination of the machinery while it is in motion, such examination or operation is made or carried in accordance with the provisions of section 64.

(2) without prejudice to any other provision of this Act relation to the fencing o machinery, every set screw, bolt and key on any revolving shaft, spindle wheel or pinion and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced, to prevent such contact.

64. Work on or near machinery in motion (চলমান যন্ত্রপাতির উপরে বা নিকটে কাজ):

(1) Where in any establishment it becomes necessary to examine any part of machinery referred to in section 61 while the machinery is in motion or as a result o such examination to carry out any mounting or shipping of belts, Lubrication or other adjusting operation while the

machinery is in motion such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing whose name has been recorded in the register prescribed in this behalf and while he so engaged such worker shall not handle a belt at a moving pulley unless the belt is less than fifteen centimeters in width and unless the belt-joint is either laced or flush with the belt.

(2) The Government may, by notification in the official Gazette, prohibit, in any specified establishment, the cleaning, lubricating, or adjusting by any person of specified part of machinery when those parts are in motion.

65. **Striking gear and devices for cutting off power (স্টাইটিকং গিয়ার এবং শক্তি সরবরাহ বিচ্ছিন্ন করার পন্থা):**

(1) In every establishment:

(a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which from part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from cropping back on the first pulleys;

(b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every establishment suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

66. **Self-action machines (স্বয়ংক্রিয় যন্ত্রপাতি):** No traversing part of a self-acting machine in any establishment and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or other distance of forty five centimeters from any fixed structure which is not part of the machine:

Provided that the chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

67. **Casing of new machinery (নতুন যন্ত্রপাতি আবৃত করা):** In all machinery driven by power and installed in any establishment after the commencement of this Act-

(a) every set screw, belt or key or any revolving shaft, spindle wheel or pinion shall be so, sunk, encased or otherwise effectively guarded to prevent danger; and

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased unless it is so situated as to be as safe it would be if it were be if were completely encased.

68. Cranes and other lifting machinery (ক্রেন এবং অন্যান্য উত্তোলন যন্ত্রপাতি): The following provisions shall apply in-

(a) every part thereof, including the working gear, whether fixed or movable, ropes and chains and anchoring and fixing appliances shall be-

(i) of good construction, sound material and adequate strength,

(ii) properly maintained,

(iii) thoroughly examined by a competent person at least once in every period of twelve months and a register shall be kept containing the prescribed particulars of every such examination;

(b) no such machinery shall be loaded beyond the safe working load which shall be plainly marked thereon; and

(c) while any person is employed or working on or near the wheel-tract of a traveling crane in any place, where he would be liable to be struck by the crane, effective measures shall be taken to ensure that crane does not approach within six meter of that place.

69. Hoists and lifts (হয়েস্ট এবং লিফট):

(i) In every establishment every hoist and lift shall be-

(a) of good mechanical construction, sound material and adequate strength,

(b) properly maintained,

(c) shall be thoroughly examined by competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

(2) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or sift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(3) the maximum safe working load shall be plainly marked on every hoist or lift and no load greater than such load shall be carried thereon;

(4) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

(5) every gate referred to in subsection (2) or (4) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(6) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in an establishment after the commencement of this Act, namely-

(a) Where the cage is supported by rope or chain there shall be at least two ropes or chains separately connected with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) Efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(7) The chief Inspector may permit the continued use of a hoist or lift installed in an establishment before the commencement of this Act which does not fully comply with the provisions of subsection (1), (2), (3), (4) and (5) upon such conditions for ensuring safety as he may think fit to impose.

70. **Revolving machinery (ঘূর্ণায়মান যন্ত্রপাতি):**

(1) In every room in an establishment in which the process of grinding is carried on, there shall be permanently affixed to, or placed near, each machine in use a notice indicating the following:

(a) maximum safe working peripheral speed of every grind stone or abrasive wheel:

(b) the speed of the shaft or spindle upon which the wheel is mounted;

(c) the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every revolving vessel, cage, basket, flywheel, pulley dice or similar appliance driven by power is not exceeded.

71. **Pressure plant (প্রেসার প্ল্যান্ট):** If in any establishment any part of the plant or machinery used in manufacturing process is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

72. **Floors, stairs and means of access (মেঝে, সিঁড়ি এবং যাতায়াত পথ):** In every establishment -

(a) all floors, stairs, passages and gangways shall be of sound construction and properly maintained and where it is necessary to ensure safety steps, stairs, passages and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is, at any time, required to work; and

(c) all floors, ways and stairways shall be clean, wide and clear of all obstructions.

73. Pits, sumps, opening in floors, etc. (পিট, সাম্প, সুড়ঙ্গ মুখ ইত্যাদি):

(1) In every establishment, every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents is or may be a source of danger, shall be either securely covered or securely fenced.

74. Excessive weights (অতিরিক্ত ওজন): No person shall be employed in any establishment to lift, carry or move any load so heavy as to be likely to cause him injury.

75. Protection of eyes (চোখের নিরাপত্তা): The Government may, in respect of any manufacturing process carried on in any establishment, by rules, require that effective screens of suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of a process which involves:

(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or

(b) risk to the eyes by reason of exposure to excessive light or heat.

76. Powers to require specifications of defective parts or tests of stability (ত্রুটিপূর্ণ যন্ত্রাংশ নির্দিষ্ট অথবা তার স্থায়িত্ব পরীক্ষার ক্ষমতা): If it appears to the inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment, is in such a condition that it may be danger us to human life or safety, he may serve on the employer of the establishment an order in writing, requiring him before a specified date:

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can e used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality or any specified parts and to inform the Inspector of the result thereof.

77. Precautions against dangerous fumes (বিপজ্জনক ধোঁয়ার বিরুদ্ধে সতর্কতামূলক ব্যবস্থা):

(1) In any establishment no person shall enter or be permitted to enter any chamber, tank, vat pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risks of persons being overcome thereby, unless it is provided with a manhole of such size, as may be prescribed or other effective means of egress.

(2) No portable electric light of voltage exceeding twenty-four volts shall be permitted in any establishment for use inside any confined space such as is referred to in sub-section (1) and where the fumes present are likely to be permitted to be used in such confined space.

(3) No person in any establishment shall enter or be permitted to enter any such confined space until all practicable means have been taken to remove any fumes which may be present and to prevent any ingress of fume and unless either-

(a) A certificate in writing has been given by a competent person, based on a test carried out by himself, that the space is from dangerous fumes and fit for persons to enter, or

(b) The worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space.

(4) Suitable breathing apparatus, reviving apparatus and belts and ropes shall, in every establishment, be kept ready for instant use beside any such confined space. As aforesaid which any person as entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use; and a sufficient number of persons employed in every establishment shall be trained and practiced in the use of all such apparatus and in the method of restoring respiration.

(5) No person shall be permitted to enter in any establishment, any boiler furnace, boiler, flue chamber, tank, at, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

78. Explosive or inflammable dust, gas, etc. (বিস্ফোরক বা দাহ্য গ্যাস, ধূলা ইত্যাদি):

(1) where in any establishment any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-

(a) effective enclosure of the plant or machinery used in the process;

(b) removal or prevention of the accumulation of such dust, gas, fume or vapour;

(c) Exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any establishment the plant or machinery used in a process is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measure shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes,

(3) Where any part of the plant or machinery in an establishment contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely-

(a) Before the fastening of any joint of any pipe connected with the part of the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or any such pipe shall be effectively stopped by a stop-valve or other means;

(b) Before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce to pressure of the gas or vapour in the part or pipe to atmospheric pressure;

(c) Where any such fastening, as aforesaid, has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured; or as the case may be, securely replaced:

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any establishment to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have been first taken to remove such substance and any fumes arising there from o to render such substance shall be allowed to enter such plant, tank or vessel after any such operation until the mental has cooled sufficiently to prevent any risk of igniting the substance.

Special Provisions Regarding Health, Hygiene and Safety

স্বাস্থ্য, স্বাস্থ্যবিধি ও নিরাপত্তা সম্পর্কে বিশেষ বিধান

6.24 Special Provisions Regarding Health, Hygiene and Safety (স্বাস্থ্য, স্বাস্থ্যবিধি ও নিরাপত্তা সম্পর্কে বিশেষ বিধান)

79. Dangerous operations (বিপজ্জনক চালনা): Where the Government is satisfied that any operation carried on in an establishment exposes any person employed in it to a serious risk of bodily injury, poisoning, or disease, it may make rules applicable to such establishment or class of establishments in which such operation is carried on-

(a) specifying the operation and declaring it to be hazardous;

(b) prohibiting or restricting the employment of women, adolescents or children in the operation;

(c) providing for the periodical medical examination of persons employed in the operation and prohibiting the employment of persons not certified as fit for such employment;

(d) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on and the use of any specified materials or processes in connection with the operation; and

(e) notice specifying use and precautions regarding use of any corrosive chemicals.

৯০. Notice to be given of accidents (দুর্ঘটনা সম্পর্কে নোটিস প্রদান):

(1) When any accident occurs in an establishment causing loss of life or bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption, outbreak of fire or irruption of water or fumes occurs in an establishment, the employer of the establishment shall give notice of the occurrence to the Inspector within two working days.

(2) Where an accident mentioned in sub-section (1) causes bodily injury resulting in the compulsory absence from work of the person injured for a period exceeding forty eight hours it shall be entered in a register in the prescribed from.

(3) A copy of the entries in the register referred to in sub-section (2) shall be sent by the employer of the establishment, within fifteen days after the 30th day of june and the 31st day of December in each year, to the chief Inspector.

৯১. Notice of certain dangerous occurrences (কতকগুলো বিপজ্জনক নোটিস): Where in an establishment, any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or not, the employer of the establishment shall send notice thereof the Inspector within three working days.

৯২. Notice of certain disease (কতিপয় ব্যাধি সম্পর্কে নোটিস):

(1) Where any working in an establishment contacts any disease specified in the second schedule, the employer or the worker concerned or any person authorized by him in this behalf shall send notice thereof to the Inspector in such prescribed form and within such time as may be prescribed by Rules.

(2) If any registered medical practitioner attends on a person who is, or has been employed in an establishment and who is, or is believed by such medical practitioner to be, suffering from any disease specified in the second Schedule, the medical practitioner shall, without delay, send a report in writing to the chief Inspector stating:

(a) the name and postal address of the patient;

(b) the disease from which he believes the patient to be suffering;

(c) the name and address of the establishment in which the patient is or was last employed.

(3) The Government may add to or subtract from the Second Schedule any disease by notification in the official Gazette.

৯৩. Power to direct enquiry into cases of accident or disease (দুর্ঘটনা বা ব্যাধি সম্পর্কে তদন্তের নির্দেশ প্রদানের ক্ষমতা):

(1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in any establishment or when any disease specified in the second schedule has been or suspected ot have contracted in any establishment, the government, if it is of opinion that a formal enquiry into the cases, of, and circumstance attending, the accident or disease ought to be held, may appoint a competent person to holding the enquiry.

(2) The person appointed to hold any such enquiry shall have all the power of a Civil Court under the Code of Civil Procedure,1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the penal code.

(3) Any person holding an enquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the enquiry.

(4) The person-holding enquiry shall make a report to the Government stating the causes of the accident and its circumstances, and adding any observations, which he and any of the assessors may think fit to make.

(5) The Government may, cause report to be punished at such time and in such manner as it may think fit.

84. Power to take samples (নমুনা সংগ্রহের ক্ষমতা):

(1) An Inspector may, at any time during the normal working hours, informing the employer of an establishment, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the establishment such use being, in the opinion of the Inspector in contravention of the provisions of this Act or of the rules, or likely to cause bodily injury to or injury to the health of, workers in establishment.

(2) Where the Inspector takes such sample, he shall, in the presence of the employer, unless he willfully absents himself, divide the sample into three portions and effectively seal and suitable mark them shall permit the employer to add his own seal and mark thereon.

(3) The employer shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall forthwith give one portion of the sample to the employer, send the second portion to a Government Analyst for analysis and report thereon and retain the third portion for production to the court before which proceedings, if any are instituted in respect of the substance.

(5) Any document, purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

85. Powers of Inspector in case of certain danger (কতিপয় বিপদের ক্ষেত্রে পরিদর্শকের ক্ষমতা):

(1) If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Inspector that any establishment or any part thereof or any matter, thing or practice in or connected with the establishment or with the control, management or direction

thereof, is dangerous to human life or safety or thereof, is dangerous to human life or safety or defective so as to threaten, or tend, to the bodily injury of any person, he may give notice in writing thereof to the employer of the establishment, and shall state in the notice the particulars in respect of which he considers the establishment, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Inspector may, by order in writing direct the employer prohibiting the extraction or reduction of pillars in any part of such establishment if, in his opinion, such operation is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger the establishment,

(3) If the Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any establishment or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, the employer concerned, until he is satisfied that the danger is removed, the employment in or about the establishment or part thereof of any person whose employment is not, in his opinion, reasonably necessary for the purpose of removing the danger.

(4) The employer, if is aggrieved by the order under sub-section (3) may, within ten days of the receipt of the order, appeal against the same to the chief Inspector who may confirm modify or cancel the order.

(5) The Inspector making an order under sub-section (1) or (3), shall forthwith report the same to the Government and shall inform the employer concerned that such report has been so made.

(6) The chief Inspector, shall forthwith report to the Government any order, except the order of cancellation passed by him under sub-section (4), and shall also inform the employer concerned that such report has been so made.

(7) Any employer, if has any objection against any order made under sub-section (1), or (4) may inform the Government within 20 days of receipt of the order in Writing with cause thereof and the Government shall sent it to a committee for decision.

(8) The employer shall comply with the order against which objection has been made until such decision of the committee is received. Provided that on application made by the employer the order passed under sub-section (1) may be suspended, till pending decision of the committee.

86. Information about dangerous building and machinery (বিপজ্জনক ভবন এবং যন্ত্রপাতি সম্বন্ধে তথ্য প্রদান):

(1) Where any worker finds that any machinery or building used by the workers in any establishment in which he is employed is in such a dangerous condition that it is likely to cause physical injury to any worker at any time he shall inform the employer of it in writing immediately after it has come to his notice.

(2) If the employer fails to take appropriate action on such information within three days and any injury is caused to any worker because of the use of such equipment, machinery or building, he shall be liable to pay compensation to the worker injured at a rate which may be double the rate of compensation payable for such injury under chapter XII.

87. Restriction of employment of women in certain work (কতিপয় কাজে মহিলাগণের নিয়োগে বাধা-নিষেধ): The provisions of sections 39, 40 and 42 shall apply to a woman worker as they apply to an adolescent worker.

88. Power to make rules to supplement this chapter (অধ্যায়ের অনুপূরক বিধি প্রণয়নের ক্ষমতা): The Government may make rules requiring that-

(a) In any establishment such further devices and measures for securing the safety of the persons employed therein, shall e adopted;

(b) Work on a manufacturing process carried on with the aid of power, shall not be begun, in any building or part of a building in an establishment until a certificate of stability in the prescribed form has been received by the chief Inspector.

Provisions Regarding the Welfare Arrangement of Workers

শ্রমিকের কল্যাণমূলক ব্যবস্থা সম্পর্কীয় বিধান

6.25 Provisions Regarding the Welfare Arrangement of Workers (শ্রমিকের কল্যাণমূলক ব্যবস্থা সম্পর্কীয় বিধান)

89. First-aid appliances (প্রাথমিক চিকিৎসা সরঞ্জাম):

(1) There shall, in every establishment be provided and maintained, so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the contents prescribed by rules.

(2) The number of such boxes or cupboards shall not be less than one for every one hundred fifty workers ordinarily employed in the establishment.

(3) Every first-aid box or cupboard shall be kept in charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the establishment.

(4) A notice shall be affixed in every work-room stating the name of person in charge of the first and box or cupboard provided in respect of that room and such person shall wear a badge so as to facilitate identification.

(5) In every establishment wherein three hundred or more workers are ordinarily employed, there shall be provided and maintained a sick room with dispensary of the prescribed size, containing the prescribed equipment or similar facilities, in the charge of such medical and nursing staff as may be prescribed.

90. Maintenance of safety Record Book (সেফটি রেকর্ড বুক সংরক্ষণ): In every establishment factory wherein more than twenty five workers are employed, shall maintain compulsorily, in the prescribed manner, a safety record book and safety board.

91. Washing facilities (ধৌতকরণ সুবিধা):

(1) In every establishment-

(a) Adequate and suitable facilities for washing and bathing shall be provided and maintained for the use of the workers therein;

(b) Separate and adequately screened facilities shall be provided for the use of male and female workers; and

(c) Such facilities shall be conveniently accessible and shall be kept clean.

(2) The Government may in respect of any establishment or class or description of establishments or of any manufacturing process, prescribed standards of adequate and suitable facilities for washing.

92. Canteens (ক্যান্টিন):

(1) In every establishment wherein more than one hundred workers are ordinarily employed, there shall be provided adequate number of canteens for the use of the workers.

(2) The Government may make rules providing for-

(a) The standards in respect of construction, accommodation, furniture and other equipment of the canteen; and

(b) The constitution of a managing committee for the canteen and representation of the workers in the management of the canteen.

(3) The managing committee to be formed under the rules shall determine the foodstuff to be served in the canteen, and the charges therefore,

93. Rest room, etc. (বিশ্রাম কক্ষ, ইত্যাদি):

(1) In every establishment wherein more than fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms, and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers.

Provided that any canteen maintained in accordance with the provisions of section 92 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exist, no worker shall eat any food in the work room.

(2) The shelters, rest rooms or lunchrooms provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) In the establishments wherein more than 25 female workers are employed, separate shelter rooms are to be maintained and in establishment wherein less then 25 female workers are employed, separate and adequate spaces with screen shall be provided.

94. Rooms for children (শিশু কক্ষ):

(1) In every establishment, wherein forty or more workers are ordinarily employed, thee shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, adequately lighted and ventilated and maintained in a clean and sanitary condition and shall be under the charge of woman trained or experienced in the care of children and infants.

(3) Such rooms shall be conveniently accessible to the mothers o the children accommodated therein and so far as is reasonably practicable they shall not be situated in close proximity to an part of the establishment where obnoxious fumes, dust or odors are given off or in which excessively noisy processes are carried on.

(4) Such rooms shall be solidly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be water-proof.

(5) The height of such rooms shall not be less than 360cm from the floor to the lowest part of the roof and there shall be not less than 600sq. cm of floor area for each child to be accommodated.

(6) Effective and suitable provisions shall be made in every part of such room for scuring and maintaining adequate ventilation by the circulation of fresh air.

(7) Such rooms shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child and a sufficient supply of suitable toys for the older children.

(8) A suitable fenced and shady open air ply-ground shall be provided for the older children; Provided that the chief Inspector may, by order in writing, exempt any establishment from compliance with this sub-rule if he is satisfied that there is not sufficient space available for the provision of such a playground.

95. Recreational and educational facilities in tea plantation (চা বাগানে বিনোদন ও শিক্ষার সুবিধা): The Government may, in respect of the plantations :

(a) Make rules requiring every employer to make provision for such recreational facilities for the workers and their children as may be prescribed;

(b) Where the children of the tea plantation workers between the ages of six and twelve of the workers exceed twenty-five in number, make rules requiring the employer to provided educational facilities for the children in such manner and of such standard as may be prescribed.

(c) In every tea plantation there shall be established adequate medical centers for the workers and their children as may be prescribed by rules.

96. Housing facilities in tea plantation (চা বাগানে গৃহায়ন সুবিধা): Every employer in a tea plantation shall provide housing facilities to every worker and his family residing in the tea plantation.

97. Facilities for daily necessities, etc. in tea plantation (চা বাগানে দৈনন্দিন প্রয়োজনীয় জিনিসপত্র ইত্যাদি প্রাপ্তির সুবিধা): Every employer in a tea plantation shall provide facilities within easy reach of the workers for obtaining the daily necessities of life.

98. Medical care for newspaper workers (সংবাদপত্র শ্রমিকের জন্য চিকিৎসা পরিচর্যা): Every newspaper worker and his dependents shall be entitled to medical care at the cost of the newspaper establishment in such manner and to such extent as may be prescribed.

Explanation : For the purpose of this section, 'dependents' means wife, or husband, as the case may be, widowed-mother, invalid parents and legitimate sons and daughters of a newspaper worker residing with him and wholly dependent upon him.

99. Compulsory Group Insurance (বাধ্যতামূলক গ্রুপ বিমা চালুকরণ): Government may, in the manner provided by rules, introduce group insurance, in the establishments wherein minimum 200 permanent workers are employed.

Provisions Regarding Working Hours & Leaves of Workers

শ্রমিকের কর্মঘণ্টা ও ছুটি সংক্রান্ত বিধানসমূহ

6.26 Provisions Regarding Working Hours & Leaves of Workers (শ্রমিকের কর্মঘণ্টা ও ছুটি সংক্রান্ত বিধানসমূহ)

100. Daily hours (দৈনিক কর্মঘণ্টা): No adult worker shall ordinarily be required or allowed to work in an establishment for more than eight hours in any day:

Provided that, subject to the provisions of section 108, any such worker may work in an establishment not exceeding ten hours in any day.

101. Interval for rest or meal (বিশ্রাম বা আহারের জন্য বিরতি): Any worker in any establishment shall not be liable to work either-

(a) For more than six hours in any day unless he has been allowed an interval of at least one hour during that day for rest or meal;

(b) For more than five hours in any one day unless he has been allowed an interval of at least half an hour during that day for rest or meal; or

(c) For more than eight hours unless he has had an interval under clause (a) or two such intervals under clause (b) during that day for rest or meal.

102. Weekly hours (সাপ্তাহিক কর্মঘন্টা):

(1) No adult worker shall ordinarily be required or allowed to work in an establishment for more than forty-eight hours in any week.

(2) Subject to the provisions of section 108, an adult worker may work for more than forty-eight hours in a week:

Provided that the total hours of work of an adult worker shall not exceed sixty hours in any week and on the average fifty-six hours per week in any year:

Provided further that in the case of a worker employed in an establishment which is a road transport service, the total hours or overtime work in any year shall not exceed one hundred and fifty hours.

Provided further that the government, if satisfied that in public interest or in the interest of economic development such exemption or relaxation is necessary, in certain industries, by order in writing under specific terms and conditions, may relax the provision of this section or exempt, for a maximum period of six months, from the provision of this section at a time.

103. Weekly holiday (সাপ্তাহিক ছুটি): An adult worker employed in an establishment55

(a) Which is a shop or commercial establishment, or industrial establishment, shall be allowed in each week one and half days holiday and in factory and establishment one day in a week;

(b) Which is a road transport service, shall be allowed in each week one day's holiday of twenty four consecutive hours; and no deduction on account of such holidays shall be made from the wages of any such worker.

104. Compensatory weekly holiday (ক্ষতিপূরণমূলক সাপ্তাহিক ছুটি): Where, as a result of the passing of an order or the making of a rule under the provisions of this act exempting an establishment or the workers therein from the provisions of section 103, a worker is deprived of any of the weekly holidays provided for in that section, he shall be allowed, as soon as circumstances permit, compensatory holidays, of equal number to the holidays so deprived of.

105. Spread over working time (কর্ম সময়ের সম্প্রসারণ): The periods of work of and adult worker in an establishment shall be so arranged that, inclusive of his interval for rest or meal under section 101, it shall not spread over more than eleven hours, and subject to such conditions as be may imposed by the Government, either generally or in the case of any particular establishment.

106. Night shift (নৈশ-পালা): Where, an adult worker in an establishment works on a shift which extends beyond midnight:

(a) For the purposes of section 103 a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning from the end of his shift; and

(b) The following day for him shall be deemed to be the period of twenty-four consecutive hours beginning from the end of this shift and the hours he has worked after midnight shall e counted towards the previous day.

107. Restriction on cumulative hours of work on a vehicle (যানবাহনে ক্রমপুঞ্জিত কর্মঘণ্টার উপর বাধা): No worker shall work or be allowed to work on a vehicle or two or more vehicles in excess of the period during which he may be lawfully employed under this Act.

108. Extra-allowance for overtime (অধিককাল কর্মের জন্য অতিরিক্ত ভাতা):

(1) Where a worker works in an establishment on any day or week for more than the hours fixed under this Act, he shall, in respect of overtime work, be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any.

(2) Where any worker in an establishment are paid on a piece rate basis the employer, in consolation with the representatives of the workers, may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rates of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(3) The government may prescribe registers to be maintained in an establishment for the purpose of securing compliance with the provisions of this section.

109. Limitation of hours of work for women (মহিলা শ্রমিকের জন্য সীমিত কর্মঘণ্টা): No women shall, without her consent, be allowed to work in an establishment between the hours of 10.00PM and 6.00 AM

110. Restriction on double employment (দ্বৈত চাকরির উপর বাধা): No adult worker shall be employed or allowed to be employed for work in more than one establishment on any day, except on permission in writing from the chief Inspector on such terms and conditions as he may impose.

111. Notice of periods of work for adults and preparation thereof (প্রাপ্ত বয়স্ক শ্রমিকের কাজের সময়ের নোটিস এবং তার প্রস্তুতি):

(1) There shall be displayed and correctly maintained in every establishment in accordance with the provisions of section 337, a notice of periods of work for adult workers showing clearly the periods which adult workers may be required to work.

(2) The periods shown in he notice shall be fixed beforehand in accordance with the provisions of this section and shall be such that workers working during such periods would not be working in contravention of the provisions of sections, 100, 101, 102, 103 and 105.

(3) Where all the adult workers in an establishment are required to work during the same period, the employer, shall fix those periods generally.

(4) Where all the adult workers in an establishment are not required to work during the same periods, the employer, shall classify them into groups according to the nature of their work, and indicate the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the employer shall fix the period during which the group may be required to work.

(6) Where any group is required to work on a system of shifts, and the relays are not on a undetermined periodical changes, the employer shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is required to work on a system of shifts, and the relays are or are intended to be subject to predetermined periodical changes of shifts, the employer, shall draw up a scheme of shifts, where under the periods during which any relay of the group may be required to work on the relay which will be working at any time of the day shall be known for any day.

(8) A copy of the notice shall be sent in duplicate to the Inspector before the day on which an establishment begins work, for approval of the periods of work by the Inspector.

(9) The Inspector shall return a copy of the notice to the employer within one week of its receipt, indicating modifications if any; the employer shall immediately comply with the modifications, if made and shall preserve the approval in the records of the establishment.

(10) Any proposed change in the system of work in an establishment which will necessitate a change in the notice shall be notified to the Inspector in duplicate before the change is made, and, except with the previous sanction of the Inspector, no such change shall be made,

(11) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the days work.

112. Special age limit for Road transport Service worker (সড়ক পরিবহন শ্রমিকের জন্য বিশেষ বয়সসীমা):

(1) No person shall be employed as driver, in an establishment which is a road transport service unless he has attained the age of twenty one years.

(2) No person shall be employed in an establishment which is a road transport service in any other post unless he has attained the age of eighteen years.

113. Hours of work to correspond with notice and register (নোটিস এবং রেজিস্টারের সাথে কর্মঘন্টার মিল থাকা): No adult worker shall be required or allowed to work otherwise than in accordance with the notice under section 111(1) and the entries made beforehand against his name in the register maintained under section.

114. Closure of shops, etc. (দোকান, ইত্যাদি বন্ধ):

(1) Every establishment which is shop or commercial or industrial establishment shall remain entirely closed for at least one and a half day in each week.

(2) The one and half day on which establishments shall remain entirely closed, shall be fixed for each area by the chief Inspector. Provided that the chief Inspector may, from time to time, refix such day for each area in the public interest.

(3) No shop shall on any day remain open after the hours of 8.00 O'clock post maritime: Provided that any customer who was being or was waiting in the shop to be served at such hour, may be served during the period of thirty minutes immediately following such hour:

(4) The Government may, on consideration of special circumstances, alter, by notifications in the official Gazette, the closing hours of shops in any area in any season on such conditions as may be imposed.

(5) The provisions of this section shall not apply to-

(a) Docks, wharves or stations and terminal offices o transport services including airports;

(b) Shops dealing mainly in any vegetable, meat, fish, dairy products, bread, pasties, sweetmeats and flowers;

(c) Shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites;

(d) Shops dealing in articles required for funerals, burials or cremation;

(e) Shops dealing mainly in tobacco, cigars, cigarettes, biris, pan, liquid refreshments, newspapers or periodicals sold retail for consumption in the premises, ice;

(f) Petrol pumps for the retail sale of the petrol and automobile service stations not being repair workshops;

(g) Barbars' and hair dressers' shops;

(h) any system of public conservancy or sanitation,

(i) any industry, business or undertaking which supplies power, light or water to the public;

(j) clubs, hotels, restaurants, catering houses cinemas or theatres:

Provided that where several trades or business are carried on in the same shop or commercial

establishment and, the majority of them, by their nature, are eligible to exemption under this section, the exemption will apply to the entire shop or commercial establishment:

Provided further that the Chief Inspector may, by a general or special order, published in the official Gazette, fix the opening or closing hours for any of the foregoing establishments or class of establishment.

115. Casual leave (নৈমত্তিক ছুটি): Every worker shall be entitled to casual leave the full wages for ten days in a calendar year, and such leave shall not be accumulated and carried forward to the succeeding year:

Provided that noting in this section shall apply to a worker employed in a tea plantation.

116. Sick leave (পীড়া-ছুটি):

(1) Every worker other than a newspaper worker, shall be entitled to sick leave with full wages for fourteen days in a calendar year.

(2) Every newspaper worker shall be entitled to sick leave with half wages for not less than one eighteenth of the period of services.

(3) No such leave shall be allowed unless a registered medical practitioner appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner, after examination, certifies that the worker is ill and requires sick leave for cure or treatment for such period as may be specified by him.

(4) Such leave shall not be accumulated and carried forward to the succeeding year.

117. Annual leave with wages (মজুরিসহ বাৎসরিক ছুটি):

(1) Every adult worker, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day-

(a) In the case of a shop or commercial or industrial establishment or factory or road transport service, for every eighteen days of work;

(b) In the case of tea plantation, for every twenty two days of work;

(c) In the case of a newspaper worker, for every eleven days of work, performed by him during the previous period of twelve months.

(2) Every worker, who is not an adult, who has completed one year of continuous service n an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day-

(a) in the case of a factory, for every fifteen days of work;

(b) in the case of a tea plantation, for every eighteen days of work;

(c) in the case of a shop or commercial or industrial establishment, for every fourteen days of work performed by im during the previous period of twelve months.

(3) A period of leave allowed under this section shall be inclusive of any holiday which may occur during such period.

(4) If a worker does not, in any period of twelve months, take the leave to which he is entitled under sub-sections (1) or (2), either in whole or in part, any such leave not taken by him shall be added to the leave to be allowed to him, in the succeeding period of twelve months.

(5) Notwithstanding anything contained in sub-section (4), an adult worker shall cease to earn any leave under this section, when the earned leave due to him amounts to-

(a) in the case factory or road transport service, forty days;

(b) in the case of a tea plantation or shop or commercial or industrial establishment, sixty days;

(6) Notwithstanding anything contained in subsection (4) an adolescent worker shall cease to earn any leave under this section, when the earned leave

(a) in the case of a factory or tea plantation, sixty days;

(b) in the case of shop or commercial or industrial establishment, eighty days;

(7) Any leave applied for by a worker but refused by the employer for any reason, shall be added to the credit of such worker beyond the aforesaid limit mentioned in sub-section (5) and (6).

(8) For the purpose of this section a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period due to-

(a) any holiday;

(b) any leave with wages;

(c) any leave with or without wages due to sickness or accident;

(d) any maternity leave not exceeding sixteen weeks;

(e) any period of lay-off;

(f) a strike which is legal or a lock-out which is not illegal.

118. Festival holidays (উৎসব ছুটি):

(1) Every worker shall be allowed in a calendar year eleven days of paid festival holiday.

(2) The days and dates for such festivals shall be fixed by the employer in such manner as may be prescribed.

(3) A worker may be required to work on any festival holiday, but two day's additional compensatory holidays with full pay and a substitute holiday shall be provided for him in accordance with the provisions of section 103.

119. Calculation of wages and payment during leave or holiday period (ছুটি অথবা বন্ধের সময়ের মজুরি হিসাব ও প্রদান):

(1) For the leave or holidays allowed to a worker under the provisions of this Act, he shall be paid at the rate equal to the daily average of his full time wages including dearness allowances, and ad-hoc or interim pay, if any, for the days on which he worked during the month immediately preceding this leave but excluding any overtime allowance and bonus:

Provided that if a worker in any establishment is entitled to cash equivalent of any advantage accruing from the supply of food grains, it shall be included in his wages.

(2) A worker who has been allowed annual leave for a period of not less than four days in the case of an adult and five days in the case of an adolescent, at any time, shall, in so far as it is practicable, be paid his wages for the period of the leave so allowed, before his leave begins.

Wage
মজুরি

6.27 Special Definition of Wage
(মজুরির বিশেষ সংজ্ঞা)

120. Special definition of 'wages' (মজুরির বিশেষ সংজ্ঞা): In this Chapter, unless there is anything repugnant in the subject or context, 'wages, means wages as defined in section 2 (XLV), and includes:

(a) Any bonus or other additional remuneration payable under the terms of employment;

(b) Any remuneration payable in respect of overtime work, holiday or leave;

(e) Any remuneration payable under any award or settlement between the parties or under order of any Court;

(d) Any sum payable under this Act or any agreement by reason of termination of employment whether by way of retrenchment, discharge, removal, resignation, retirement, dismissal or otherwise; and

(e) Any sum payable due to lay-off or suspension.

6.28 Rules Regarding Deduction from Wage
(মজুরি থেকে কর্তন সংক্রান্ত বিধান)

125. Deductions which may be made from wages (মজুরি হতে কর্তনযোগ্য বিষয়াদি):

(1) No deduction shall be made from the wages of a worker except those authorized by or under this Act.

ব্যবসায়ের আইনগত পরিবেশ (খ)

(2) Deductions from the wages of a worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely-

(a) Fines imposed under section 25;

(b) Deductions for absence from duty;

(c) Deduction for damage to or loss of goods expressly entrusted to the worker for custody, or for loss of money for which he is required to account, where such damage o loss is directly attributable to his neglect or default;

(d) Deductions for house-accommodation supplied by the employer;

(e) Deductions for such amenities and services, other than tolls and raw materials required for the purpose of employment, supplied by the employer as the Government may, by general or special order, authorize;

(f) Deductions for recovery of advances or loans of whatever nature or adjustment of overpayments of wages;

(g) Deductions of income-tax payable by the worker;

(h) Deductions required to be made by order of a court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the provident Funds Act, 1925 (XIX of 1925), applies or any other recognized provident fund as define in the Income-tax provident fund as define in the Income-tex. Ordinance, 1984 (XXXVI of 1984), or any provident fund approved in this behalf by the Government, during the continuance of such approval;

(j) deductions for payments to any co-operative societies approved by the Government or to a scheme of scheme of insurance maintained by any Government Insurance Company or Bangladesh postal Department;

(k) deductions, made with the written authorization of the workers for the contribution to any fund or scheme constituted or framed by the employer, with the approval of the Government, for the welfare of the workers or the members of their families or both, and

(l) deduction of subscription for the CBA union through check-off system.

126. Deductions for absence from duty (কর্তব্যে অনুপস্থিতির জন্য মজুরি কর্তন):

(1) deductions may be made under section 125(2) (b) only on account of the absence of a worker from the place, where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall, in no case bear to the wages payable to the worker in respect of the wage period for which the deduction is made a larger proportion, he was required to work;

Provided that, subject to any rules made in this behalf by the Government, if ten or more workers acting in concert absent themselves without due notice and without reasonable cause, such deduction from any such worker may include such amount not exceeding his wages for eight days as may, by the terms of his employment, be due to the employer in lieu of due notice.

Explanation: For the purposes of this section, a worker shall be deemed to be absent from the place where he is required to work if, although present in such place he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

127. Deductions for damage or loss (ক্ষতি বা বিনষ্টির জন্য মজুরি কর্তন):

(1) A deduction under section 125(2) (c) shall not exceed the amount of the damage o loss caused to the employer by neglect or default of the worker and shall not be made until the worker has been given an opportunity of showing cause and found guilty of the charge in compliance with the principles of natural justice.

(2) All such deductions and all the realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed by rules.

128. Deductions for services rendered (সেবা প্রদানের জন্য মজুরি কর্তন): A deduction under section 125(2)(d) and (e) shall not be made from the wages of a worker unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the Government may impose.

129. Deductions for recovery of loans or advances (কর্জ বা অগ্রিম আদায়ের জন্য মজুরি কর্তন): Deductions under section 125(2) (f) shall be subject to the following conditions, namely:

(a) Recovery of a loan or an advance of money given before employment began shall be made from the first payment or wages in respect of a complete wage period, but no recovery shall be made of such loans or advances given for traveling expenses;

(b) Recovery of loans or any advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such loans or advances may be given and the installment by which they may be recovered.

130. Other deductions from wages (মজুরি হতে অন্যান্য কর্তন): Deductions under section 125 (2) (j) (k) and (l) shall be subject to such conditions as the Government may impose.

6.29 Special Definition of Worker for Consideration of the Chapter
(অধ্যায় বিবেচনায় শ্রমিকের বিশেষ সংজ্ঞা)

(s) "worker" means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, [by whatever name he is called], to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative (or supervisory) capacity.

6.30 Right to Join Trade Union of the Employers and Workers
(মালিক ও শ্রমিকের ট্রেড ইউনিয়ন করার অধিকার)

176. **Trade unions of workers and employers:** Subject to the provisions of this Chapter,-

(a) workers, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between workers and employers or workers and workers and, subject to the constitution of the union concerned, to joint trade union of their own choosing;

(b) Employers, without distinction whatsoever, shall have the right form trade union primarily for the purpose of regulating the relations between employers and workers or employers and employers and, subject to the constitution of the union concerned, to join trade union of their own choosing; and

(c) Trade unions of workers and employers shall have the right to form and join federations and any such union and federation shall have the right to affiliate with any international organization and confederation of worker's or employers organization.

(d) Trade unions and employers' associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmers;

6.31 Method of Registration of Trade Union
(ট্রেড ইউনিয়ন নিবন্ধন পদ্ধতি)

177. **Application for registration (রেজিস্ট্রিকরণের জন্য আবেদন):** Any trade union may, under the signature of its president and secretary, apply for registration of the trade union to trade unions of the concerned area under this chapter.

178. Requirements for application (আবেদনের জন্য প্রয়োজনীয় বিষয়াদি):

(1) An application for registration of a trade union shall be made to the director of Labour or to the officer authorized in this behalf.

(2) The application shall be accompanied by-

(a) A statement showing-

(i) the name of the trade union and the address of its head office;

(ii) date of formation of the union;

(iii) the names, ages, addresses, occupations and the posts in the union of the officers of the trade union;

(iv) statement of total paid membership;

(v) the name of the establishment to which the trade union relates and the total number of member- unions;

(vi) in case of a federation of trade unions, the name, addresses and registration numbers of member-unions;

(b) Three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the Chairman of the meeting;

(c) A copy of the resolution by the members of the trade union authorising its president and secretary to apply for its registration; and

(d) In case of a federation of trade unions a copy of the resolution from each of the constituent unions agreeing to become a member of the federation.

(3) The Director of Labour or the officer authorized in this behalf shall, or receipt of an application under sub-section (1), forthwith send a copy thereof along with the list of officers of the union to the employer concerned for information.

Provided that in case where the applicant is a federation of trade unions, a public notice showing the names of the officers of the union shall be published at the expenses of the applicant.

179. Requirements for registration (রেজিস্ট্রিকরণের জন্য প্রয়োজনীয় বিষয়াদি):

(1) A trade union shall not be entitled to registration under this chapter unless the constitution thereof provides for the following matters, namely:

(a) The name and address of the trade union;

(b) The objects for which the trade union has been formed;

(c) The manner in which a worker may become a member of the trade union specifying therein that no worker shall be enrolled as its member unless he applies in the form set out in the constitution declaring that he is not a member of any other trade union;

(d) The sources of the fund of the trade union and statement of the purposes for which such fund shall be applicable;

(e) The conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him;

(f) The maintenance of a list of the member of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union;

(g) The manner in which the constitution shall be amended, varied or rescinded;

(h) The safe custody of the funds of trade union, its annual, audit, the manner of audit and adequate facilities for inspection of the books of account by the officers and members of trade union;

(i) The manner in which the trade union may be dissolved;

(j) The manner of election of officers by the general body of the trade union and the tem, not less than two years and not exceeding three years, for which an officer may gold office;

(k) The number of members of the executive which shall not be less than five and more than thirty-five as may be prescribed by rules;

(l) The procedure for expressing want of confidence in any officer of the trade union; and

(m) The meetings of the executive and of the general body o the trade union, so that the executive shall meet at least once in every three months and the general body at least once every year.

2) A trade union of workers shall not be entitled to registration under this chapter unless it has a minimum membership of thirty percent of the total number of workers employed in the establishment in which it is formed:

Provided that more than one establishments under the same employer, which are allied to and connected with the another for the purpose of carrying out the same industry irrespective of their place of situation, shall be deemed to be one establishment for the purpose of this sub-section.

(3) Where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the same industry the matter may be referred to the director of labour for decision.

(4) Any person aggrieved by a decision of the director of labour under sub-section (3), may, within thirty days of the decision, prefer an appeal to the labour court; and the decision of the labour court shall be final.

180. Consideration of the capacity of the members and executives (ট্রেড ইউনিয়নের সদস্য বা কর্মকর্তাদের যোগ্যতা বিবেচনা):

(1) Notwithstanding anything contained in the constitution of a trade union, a person shall not be entitled to be, or to be elected as a member or an officer of a trade union if-

(a) he has been convicted of an offence involving moral turpitude or an offence under section 196(2) (d) or section 298 and unless two years have elapased from the date of his release;

(b) he is not employed or engaged in that establishment in which the trade union is formed;

(c) Nothing is sub-section (1) (b) shall apply to any federation of trade unions.

182. Registration (রেজিস্ট্রিকরণ বা রেজিস্ট্রেশন):

(1) The director of Labour, on being satisfied that a trade union has complied with all the requirements of this chapter, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt o the application for registration.

(2) If the Director of Labour finds the application to be deficient in any material respect, he shall communicate in writing his objection to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objection.

(3) When the objection raised by the director of Labour has been satisfactorily met, the Director of Labour shall register the trade union as provided in sub-section (1) and if the objection is not met satisfactoril he shall reject the application.

(4) When the application has been rejected or the director of Labour has, after settlement of the objection delayed disposal of the application beyond the period of sixty days provided in subsection (1), the trade union may, within a period of thirty days from the date of such rejection or the date of expiry of such period, whichever is earlier, appeeal to the Labour court.

(5) The Labour court, after hearing the appeal, for reasons to be stated in its judgment, may pass an order directing the director of labour to register the trade union and to issue a certificate of registration within a period of seven days from the date of order or may dismiss the appeal.

(6) Any party aggrieved by the judgment passed by the labour court under sub-section (5) may prefer appeal to the labour appellate tribunal within 30 (thirty) days from the date of receipt of the order of the labour court.

6.32 Registration of Trade Unions in a Group of Establishment (প্রতিষ্ঠান-পুঞ্জে ট্রেড ইউনিয়ন রেজিস্ট্রিকরণ)

183. Registration of trade unions in a group of establishment (প্রতিষ্ঠান-পুঞ্জে ট্রেড ইউনিয়ন রেজিস্ট্রিকরণ):

(1) Notwithstanding anything contained in this chapter, for the purpose of formation of a trade union any group of establishments shall be treated as an establishment, and no separate trade uion shall be formed in any establishment included in the group of establishments.

(2) A group of establishment shall, for the purposes of this section, mean all the establishment, none of which employs more than twenty workers, in a specified area carrying on the same or similar specified industry.

(3) Notwithstanding anything contained in sub-section (2), all the establishments,irrespective of the number of workers employed therein, in a specified area carrying on any of the following industries shall be deemed to be a group of establishments for that area, namely:

(a) private road transport, including rickshaw;

(b) private inland river transport;

(c) tailoring and garments manufacturing industry wherin less than 100 workers are employed;

(d) tea industry;

(e) jute bailing;

(f) tennary;

(g) bidi;

(h) handloom;

(i) hosiery;

(j) printing proess;

(k) hotels or motels where number of guest rooms does not exceed twenty-five;

(l) retaurant not forming part of a hotel;

(m)small-scale metal industry;

(n) book-binding;

(o) cinema and theatre:

Provided that the government may, if it deems fit so to do in the national interrest, by notification in the official gazette, add any industry to this list of industries.

(4) Specified area as mentioned in sub-section (2) or (3) shall mean such area specified for specific industries published by notification in the official gazette, by the government; and such area may be at national, regional or local level, as may be expendient; and such area may be at national, regional or local level, as may be expendient; and different areas may be specified for different industries.

(5) Specified industries as mentioned in sub-section (2), shall mean such industries which, the Government, may by notification in the official gazette, specify for the purpose.

(6) A trade union for a group of establishments shall be registered, if it has as its members not less than thiry percent of the total number of workes employed in the entire group of establishments taken together;

(7) Notwithstanding anything contained in this chapter a person who is not employed or engaged in an establishment may be entitled to be, or to be elected as, an officer of any trade union, formed in any group of establishments, if the constitution of such trade union provides for election of such person:
Provided that, the number of such persons shall not in any case be more than one fourth of the total number of its of officers.

(8) Subject to this section other provisions of this chapter shall apply to a trade union formed in a group of establishments as they apply to a trade union formed in an individual establishmetn.

6.33 Cancellation of Registration
(রেজিস্ট্রি বা নিবন্ধন বাতিলকরণ)

190. Cancellation of registration (রেজিস্ট্রি বা নিবন্ধন বাতিলকরণ):

(1) Subject to the other provisions of this section, the registration of a trade union may be cancelled by the director of Labour if the trade union has-

(a) Applied for cancellation of registration;

(b) Ceased to exist;

(c) Obtained registration by fraud or by misrepresentation of facts;

(d) Contravened any of the basic provisions of its constitution;

(e) Committed any unfair labour practice;

(f) A membership which has fallen short of the number of membership required under this chapter; and

(g) Contravened any of the provisions of this chapter or the Rules.

(2) Where the director of Labour is satisfied on enquiry that the registration of a trade union should be cancelled, he shall submit an application to the Labour court praying for permission to cancel such registration.

(3) The Director of Labour shall cancel the registration of a trade union within thirty days from the date of receipt of a permission from the Labour court.

(4) The registration of a trade union shall not be cancelled on the ground mentioned in sub-section (1) (e) if the unfair labour practice is not committed within three months prior to the date of submission of the application to the Labour Court.

6.34 Carrying on the Function of any Trade Union without Registration is Prohibited
(রেজিস্টিকরণ ব্যতীত কোনো ট্রেড ইউনিয়নের কাজ চালানো নিষিদ্ধ)

192. No trade union to function without registration :

(1) No trade union which is unregistered or whose registration has been cancelled shall, subject to section 191 (2), function as a trade union.

(2) No person shall collect any subscription, other than enrollment fee, any fund of a trade union mentioned in sub-section (1).

6.35 Unfair Labour Practices on the Part of Employers
(মালিকের পক্ষে অসৎ শ্রম আচরণ)

195. Unfair labour practices on the part of employers : No employer or trade union of employers and no person acting on their behalf shall:

(a) Impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union ; or

(b) Refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not, a member or officer of a trade union; or

(c) Discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union; or

(d) Dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker is or proposes to become, or seeks to persuade any other person to become a member or officer of a trade union, or participates in the promotion,

(e) Induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person;

(f) Compel or attempt to compel any officer of the collective bargaining agent to sing a memorandum o settlement or arrive at a settlement, by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods.

(g) Interfere with, or in any way influence the election provided for in section 202;

(h) Recruit any new worker during the period of strike under section 211 or during the currency or a strike which is not illegal, except where the conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment or a limited number of workers, in the section where the damage is likely to occur;

(i) Deliberately fails to take measures recommended by the participation committee;

(j) Fails to give reply to any communications made by the collective bargaining agent in respect of any industrial dispute;

(k) Transfer the president, general secretary, organizing secretary or treasurer of any registered trade union in contravention of section 187;

(l) Commence, continue, instigate or incite others to take part in an illegal lockout.

6.36 Unfair Labour Practices on the Part of Workers
(শ্রমিকের পক্ষে অসৎ শ্রম আচরণ)

196. Unfair labour practices on the part of workers:

(1) No worker shall engage himself in any trade union activities during his office hours without the permission of his employer:

Provided that nothing in this sub-section shall apply to the trade union activities of the president or the General Secretary of a trade union which is the collective any committee, negotiation, conciliation, arbitration or proceeding under this Act, and the employer has been duly informed of such activities.

(2) No worker or trade union of workers and no person acting on behalf of such trade union shall:

(a) Intimidate any person to become, or refrain from becoming, ir to continue to be, or to cease to be a member or officer of a trade union; or

(b) Induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for, such person or any other person; or

(c) Compel or attempt to compel any worker to pay, or refrain from paying, any subscription towards the fund or any trade union by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water or power facilities or such other methods; or

(d) Compel or attempt to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using intimidation, coercion, pressure, threat, confinement to or ouster from a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or such other methods; or

(e) Commence, continue an illegal strike or a go-slow; or instigate or incite others to take part in an illegal strike or a go-slow; or

(f) Resort to ghero, obstruction to transport or communications system or destruction of any property in furtherance of any demand or object of a trade union,

(3) It shall be an unfair practice for a trade union to interfere with a ballot held under section 202 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any other person acting on its behalf.

6.37 Federations of Trade Union
(ট্রেড ইউনিয়নের ফেডারেশনের রেজিস্ট্রিকরণ)

200. Registration of federation of trade unions:

(1) Any two or more registries trade unions formed in establishment engaged ,or currying on similar or identical industry may, if heir respective general bodies so resolved , constitute a federation by executing an instrument of federation and apply for the registration of the federation:

Provided that a trade union of workers shall not join a federation which comprises a trade union of employers nor shall a trade union of employers join a federation which comprises a trade union of workers.

(2) An instrument of federation referred to in sub-section (1) shall, among other things, provide for the procures to be followed by the federate trade unions and rights and responsibilities of the federation and the federated trade unions.

(3) An application for the registration of a federation of trade unions shall be signed by the President of all the trade unions constituting the federation or by the officers of these trade unions respectively authorized by the trade unions in this behalf and shall be accompanied by three copies of the instrument of federation referred to in sub-section (1).

(4) Subject to this Chapter shall .so far as may be and with necessary modifications, apply to a federation of trade union as they apply to a trade union.

(5) Notwithstanding anything contained in the foregoing sub-sections not less than 20 trade unions formed in different types of industries may .jointly .constitute a federation on national basis.

6.38 Responsibilities of Registered Trade Union
(নিবন্ধিত ট্রেড ইউনিয়নের করণীয়)

181. Registered trade union to maintain register, etc. (রেজিস্ট্রিকৃত ট্রেড ইউনিয়ন কর্তৃক রেজিস্টার, ইত্যাদি সংরক্ষণ): Every registered trade union shall maintain the following registers and books in such form as may be prescribed:

(a) A register of members showing particulars of subscriptions paid by each member;

(b) An accounts book showing receipts and expentiture; and

(c) A minute book for recording the proceedings of meetings.

201. Preparation and submission Returns (বিবরণী তৈরি ও দাখিল):

(1) There shall be sent annually to the Director, on or before the 30th April of the following year a general statement audited in the prescribed manner, of all receipts and expenditure and of the assets and liabilities of every trade union during the preceding calendar year.

(2) Together with the general statement, there shall be sent to the Director of Labour a statement showing all changes of officers made by the trade union during the year to which the general statement refers, together with a copy of the constitution of the trade union corrected up to the date.

(3) If a registered trade union fails to send the general statement within the time specified in subsection (1), the Director of Labour shall, by a notice, inform the union of such failure, and if the union fails to submit the general statement within thirty days of the receipt of such notice, its registration shall be liable to be cancelled.

(4) In case the trade union is member of a federation, the name of the federation shall be given in the general statement.

6.39 Collective Bargaining Agent
(যৌথ দরকষাকষি প্রতিনিধি)

202. Collective bargaining agent:

(1) Where there is only one trade union in an establishment, that trade union shall, be deemed to be collective bargaining agent for such for such establishment.

(2) Where there are more trade unions than one in an establishment, the Director of Labour shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of not more than one hundred and twenty days from the date of receipt of such application, to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment.

(3) Upon receipt of an application under sub-section (2) the director of Labour shall, by notice in writing call upon every trade union in the establishment to which the application relates to indicate, within such time, not exceeding fifteen days, as may be specified in the notice, whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to the establishment.

(4) If a trade union fails to indicate, within the time specified in the notice, its desire to be a contestant in the secret ballot, it shall be presumed that it shall not be a contestant in such ballot.

(5) If no trade union indicates, within the time specified in the notice, its desire to be a contestant in the secret ballot, the trade union which has made the application shall be declared to be the collective bargaining agent in relation to the establishment concerned, provided it has as its members not less than one-third of the total number of workers employed in the establishment.

(6) Every employer shall on being so required by the Director of labour, submit to him a list of all workers employed in the establishment for not less than a period of three months in the establishment excluding those who are casual or badly workers, and the list shall contain the following particulars; namely:

(7) On being so required Director of Labour, every employer shall submit to the Director of Labour requisite number of additional copies of the list of workers mentioned in sub-section (6) and shall provide such facilities for verification of the list submitted by him.

(8) On receipt of the list of workers from the employer, the director of Labour shall send a copy of the list to each of the contesting trade unions and shall also affix a coy there of in a conspicuous part of his office and another copy of the list in a conspicuous part of the establishment concerned, together with a notice inviting objections, if any, to be submitted to him within such time as may be specified by him.

(9) The objections, if any, received by the director of Labour within the specified time shall be disposed of by him after necessary enquiry.

(10) The Director of labour shall make such amendments, alterations or modifications in the list of workers submitted by the employer as may be required by any decision given by him on objections under sub-section (9).

(11) After amendments, alteration of modification, if any, made under sub-section (10), or where no objections are received by the director of Labour within the specified time the director of Labour shall prepare a list of worker employed in the establishment concerned duly certified and send copies there of to the employer and such of the contesting trade unions at least seven days prior to the date fixed for poll.

(12) The list of workers prepared and certified under sub-section (11), shall be deemed to be the list of voters, and every worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent.

(13) Every employer shall provide all such facilities in his establishment as may be required by the director of labour for the conduct of the poll but shall not interfere with, or in any way influence the voting.

(14) No person shall canvas for vote within a radius of forty-five meters of the polling stations.

(15) For the purpose of holding secret ballot to determine the collective bargaining agent, the Director of Labour shall-

(a) Fix the date for the poll and intimate the same to each of the contesting trade unions and also to every employer;

(b) On the date fixed for the poll to place in the polling station set up for the purpose the ballot boxes which shall be sealed in the presence of the representatives of the contesting trade unions as to receive the ballot papers.

(c) Conduct the poll at the polling stations at which the representatives of the contesting trade unions shall have the right to be present;

(d) After the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions as may be present, open the ballot boxes and count the votes; and

(e) After the conclusion of the count, declare the trade union which has received the highest number of votes to be the collective bargaining agent;

Provided that no trade union shall be declared to be the collective bargaining agent for an establishment unless the number of bots received by it is not less than one third of the total number of workers employed in such establishment.

(16) Where a registered trade union has been declared under sub-section (14) (e) to be the collective bargaining agent for an establishment, it shall be such collective bargaining agent for a period of two years and no application for the determination of the collective bargaining agent for such establishment shall be entertained within a period of two years from the date of such declaration : provided that, in the case of a group of establishments, the trade union declared to be the collective bargaining agent therefore shall be such collective bargaining agent for three years.

(17) Notwithstanding anything contained in sub-section (16), where a registered trade union desires to be the collective bargaining agent for an establishment after the expiry of the terms of an existing collective bargaining agent or where an existing Collective bargaining agent desires to continue as such for the next term, it may make an application to the director of Labour, not earlier than one hundred and fifty days and not later than one hundred and twenty days immediately before the expiry of the term of the existing collective bargaining agent, to hold a secret ballot to determine the next collective bargaining agent for the establishment.

(18) Where an application under sub-section (17) is made, a secret ballot to determine the next collective bargaining agent shall be held within one hundred and twenty days from the receipt of such application, but the trade union declared to be the next collective bargaining agent shall be the collective bargaining agent from the date of expiry of the term of the existing collective bargaining agent.

(19) Where after an application made under sub-section (17) a collective bargaining agent has not been determined for reasons beyond the control of the director of Labour before the expiry of the term of the existing collective bargaining agent, the existing collective bargaining agent shall continue to function as such till a new collective bargaining agent is determined.

(20) Where no application is made under sub-section (17), the director of Labour ay, after the expiry of the term of the existing collective bargaining agent, recognize such collective bargaining agent or any registered trade union to act as collective bargaining agent for the establishment unless a registered trade union is deemed to be a collective bargaining agent for the establishment under sub-section (1) or until a collective bargaining agent is determined by secret ballot under the foregoing provisions of this section, as the case may by.

(21) Any dispute arising out of any matter in relation to an election for determination of collective bargaining agent shall be referred to the Labour court, and the decision of the Labour court thereon shall be final.

(22) If in any election for determination of collective bargaining agent any contesting trade union receives less than ten percent of the total votes cast, the registration of the trade union shall stand canceled.

(23) A collective bargaining agent may, without prejudice to its own position, impaled as a party to any proceeding under this chapter to which it is itself a party any federation of trade unions of which it is a member.

(24) The collective bargaining agent in relation to an establishment shall be entitled to-

(a) Undertake collective bargaining with the employer on matters connected with the employment, non-employment, non-employment, the term of employment or the conditions of work;

(b) Represent all or any of the workers in any proceedings;

(c) Give notice of, and declare, a strike in accordance with the provisions of this chapter; and

(d) Nominate representatives of workers on the board of trustees of any welfare institutions or provident funds, and of the workers participation fund established under chapter XV,

(e) To conduct cases on behalf of any individual worker or group of workers.

(25) The provisions of this section shall mutatis-mutandis apply to the election or determination of collective bargaining agent in group of establishments under this Act.

বাংলাদেশ আইনগত পরিষেবা ২১ (ক)

6.40 Formation of Participation Committee (অংশগ্রহণকারী কমিটি গঠন)

205. Participation committee (অংশগ্রহণকারী কমিটি গঠন):

(1) The employer in an establishment in which fifty or more workers are normally employed shall constitute in the prescribed manner a participation

(2) Such committee shall be formed with representatives of the employer and the workers.

(3) The number of representatives of worker in such committee shall not be less than the number of representatives of the employer,

(4) The representative of the workers shall be appointed on the basis of nomination given by the trade unions in the establishment.

(5) Each of the trade unions, other than the collective bargaining agent, nominating equal number of representatives and the collective bargaining agent nominating representatives, the number of which shall be one more than the total number of representatives nominated by the other trade unions.

(6) In the case of an establishment where there is no trade union, representatives of the workers on a participation committee shall be chosen in the prescribed manner from amongst the workers engaged in the establishment for which the participation committee is constituted.

(7) Where an establishment has any unit in which at least fifty workers are normally employed, a unit participation committee, may, on the recommendation of the participation committee, be constituted in the manner prescribed by Rules.

(8) Such unit committee shall consist of the representatives of the employer sand the workers employed in or under that unit.

(9) The provisions of this section applicable in case of participation committee shall mutatismutandis apply to the unit participation committee.

6.41 Procedure of Function of Participation Committee (অংশগ্রহণকারী কমিটির কার্যপদ্ধতি)

206. Function s of participation committee (অংশগ্রহণকারী কমিটির কাজ):

(1) The functions of the participation committee shall be of inculcate and develop sense of belonging and workers commitment and, in particular-

(a) To Endeavour to promote mutual trust, understanding and co-operation between the employer and the workers;

(b) To ensure application of labour laws;

(c) To foster a sense of discipline and to improve and maintain safety, occupational health and working condition;

(d) To encourage vocational training, workers education and family welfare training;

(e) To adopt measures for improvement of welfare services for the workers and their families;

(f) to fulfill production target, improve productivity, reduce production cost and wastes and raise quality of products.

(2) A unit participation committee shall, subject to the supervision of the participation committee, discharge, as far as practicable, those functions as the specified in sub-section (1).

207. Meetings of the participation Committee (অংশগ্রহণকারী কমিটির সভা):

(1) The participation committee shall meet at least once in every two months to discuss and exchange views and recommend measures for performance of the functions under section 202.

(2) The proceedings of every meeting of the participation committee shall be submitted to the Director of Labour and the conciliator within seven days of the date of the meeting.

208. Implementation of recommendations of participation committee (অংশগ্রহণকারী কমিটির সুপারিশ বাস্তবায়ন):

(1) The employer and the registered trade union shall take necessary measures to implement the specific recommendation of the Participation committee within the period specified by the committee.

(2) If, for any reason, the employer or the registered trade union finds it difficult to implement the recommendations within the specified period, he or it shall inform the committee about it and make all out efforts to implement the same as early as possible.

Settlement of Industrial Disputes Labor Court and Labor Appellate Tribunal

বিরোধ নিষ্পত্তি, শ্রম আদালত ও শ্রম আপীল ট্রাইব্যুনাল

6.42 Method of Settlement or Resolution of Industrial Dispute (শিল্প বিরোধ নিষ্পত্তির উপায়)

(62) "industrial dispute" means any dispute or difference of opinion between employers and employers, between employers and workers or between workers and workers in respect of appointment or conditions of service or conditions of work or environment of work of any person;

209. Raising of industrial disputes (শিল্প বিরোধ উত্থাপন): No industrial dispute shall be deemed to exist, unless it has been raised in accordance with this chapter by a collective bargaining agent or an employer.

210. Settlement of industrial disputes (আলোচনার মাধ্যমে শিল্প-বিরোধ নিষ্পত্তি):

(1) If, at any time an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and workers or any of the workers, the employer, or, as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party.

(2) Within fifteen days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting for collective bargaining on the issue raised in the communication with a view to reaching an agreement thereon, and such meeting may be held with the representatives of the parties authorized in this behalf.

(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded by the employer to the Government, the Director of Labour and the Conciliator.

(4) If-

(a) The party receiving a communication under sub-section (1) fails to arrange a meeting with the representatives of the other party for collective bargaining within the time specified in sub-section (2), the other party, or

(b) No settlement is reached through dialogue within a period of one month from the date of the first meeting for negotiation, or, such further period as may be agreed upon in writing by the parties, any of the parties, may, within fifteen days from the expiry of the period mentioned in sub-section (2) or clause (b) of this sub-section, as the case may be, report the matter to the conciliator and request him in writing to conciliate in the dispute and the

conciliator shall, within ten days of receipt of such request, proceed to conciliate in the dispute.

(5) The Government shall, for the purposes of this chapter, by notification in the official Gazette, appoint such number of persons as it considers necessary, as conciliator for such specific area or any industrial establishment or industry, and the conciliator shall take up the conciliation to whom the request shall be made for conciliation under sub-section (4),

(6) The conciliator, upon receipt of the request as aforesaid, shall star conciliation and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(7) The parties to the dispute shall appear before the conciliator in person or shall be represented before him by person nominated by them and authorized to negotiate and enter into an agreement binding on the parties.

(8) If any settlement of the dispute is arrived at in the course of the proceedings before him, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.

(9) If no settlement is arrived at within the period of thirty days of receipt of request under subsection

(4) by the conciliator, the conciliation proceedings shall fail or the conciliation may be continued for such further period as may be agreed upon in writing by the parties.

(10) If the conciliation proceeding fails, the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

(11) If the parties do not agree to refer the dispute to an Arbitrator, the conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed.

(12) If the parties agree to refer the dispute to an arbitrator, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

(13) The arbitrator, to whom a dispute is referred under sub-section (12), may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties.

(14) The Arbitrator shall give award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon in writing by the parties to the dispute.

(15) After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government.

(16) The award of the arbitrator shall be final and no appeal shall lie against it.

(17) An award shall be valid for a period not exceeding two years as may be fixed by the arbitrator.

(18) The Director of Labour may, if he deems fit in the interest of settlement of a dispute, at any time, take over any conciliation proceedings pending before any conciliator and proceed to conciliate in the dispute himself or transfer such proceedings to any other conciliator, and the provisions of the preceding subsections shall apply to such proceedings.

(19) Notwithstanding anything contained in this section, collective bargaining agent in the establishments in respect of which trade union of employers or federation of trade unions of employers have been registered shall communicate with such trade union or federation regarding any industrial dispute and a settlement between them shall be binding upon all the employers and workers of those establishments.

211. Strike and lock-out ([illegible]**):**

(1) The party which raised the dispute may, within fifteen days of the issue to it a certificate of failure under section 210 (11), either give to the other party a notice of strike or lockout, as the case may be, to commence on a day, not earlier than seven days and not later than fourteen days of the date of such notice, to be specified therein, or make an application to the labour court for adjudication of the dispute:

Provided that no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specially held for he purpose, under the supervision of the conciliator, in such manner as may be prescribed.

(2) If a strike or lock-out is commenced, either of the parties to the dispute may make an application to the labour court for adjudication of the dispute.

(3) If a strike or lock-out lasts for more than thirty days, the government may, by order in writing, prohibit the strike or lock-out:

Provided that the Government may, by order in writing, prohibit a strike or look-out at any time before the expiry of thirty days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest.

(4) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(5) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour court.

(6) The Labour court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding sixty days from the date on which the dispute was referred to it :

Provided that the labour court may also make an interim award on any matter or dispute :

Provided further that any delay by the labour court in making an award shall not affect the validity of any award made by it.

(7) An award of the labour court shall be for such period as may be specified in the award which shall not be more than two years.

(8) No strike shall be permissible in an establishment for a period of three years from the date of commencement of production, if such establishment is a new one or is owned by foreigners or is established in collaboration with foreigners. But other provisions of this chapter relating to resolving industrial dispute shall apply to such establishments.

212. Cessation of industrial dispute:

(1) If the party raising an industrial dispute under section 210 fails to-

(a) Make a request of the conciliator to conciliate in the dispute under section 210(4) within in period specified therein; or

(b) Commence strike or lock-out, as the case may be, on the date specified in the notice served under section 211 (1) ; or

(c) Refer the dispute to the Labour court for settlement or serve notice of strike or lock-out, as the case may be, within the period specified in section 211 (1); the dispute shall cease to exist on the expiry of such specified period or date.

(2) when an industrial dispute has ceased to exist under sub-section (1), no fresh dispute on the same subject shall be raised within a period of one year from the date of cessation of such dispute.

213. Application to Labour court: Any collective bargaining agent or any employer or worker may apply to the labour court for the enforcement of any right guaranteed or sauced to it or him by or under this act or any award or settlement.

6.43 Illegal strikes and lock-outs
(বে-আইনি ধর্মঘট ও লক-আউট)

227. Illegal strikes and lock-outs:

(1) A strike or lock-out shall be illegal, if-

(a) it is declared, commenced or continued without giving to the other party of the dispute in the prescribed manner a notice of strike or lock-out or before or after the date of strike or lock-out specified in such notice, or in contravention of section 225, or,

(c) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 205, or

(d) it is continued in contravention of an order made under section 211 or 226; or

(e) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of the matter covered by a settlement or award.

(2) A lock-out declared in consequence of an illegal strike and a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

6.44 Labour Court: Formation & Functions
(শ্রম আদালত : গঠন ও কার্যক্রম)

214. Settlement by Labour courts (শ্রম আদালতের মাধ্যমে নিষ্পত্তি):

(1) For the purposes of this Act, the Government shall, by notification in the official Gazette, establish as many labour courts as it considers necessary.

(2) Where more than one labour court is established under sub-section (1), the Government shall specify in the notification the territorial limits within which each one of them shall exercise jurisdiction under this act.

(3) A labour court shall consist of a chairman and two members to advise him, but in case of trial of any offence or in disposal of any matter under chapter X and XII it shall be constituted with the chairman only.

(4) The chairman of the labour court shall be appointed by the Government from amongst the District judges or an additional district judges.

(5) The terms and conditions of appointment of the chairman of the labour court shall be determined by the Government.

(6) One of the two members of the labour court shall be the representative of employers and the other shall be the representatives of the workers and they shall be appointed in the manner hereinafter provided in sub-section (9).

(7) The Government shall constitute, in the manner prescribed by rules, by notification in the official Gazette, two panels, one of which shall consist of six representatives of employers and the other of six representatives of the workers.

(8) The panel of members prepared under sub-section 99) shall be reconstituted after every two years, notwithstanding the expiry of the said period of two years, The members shall continue on the panels till the new panels are constituted and notified in the official Gazette.

(9) The chairman of the labour court shall, for hearing or disposal of a case relating to a specific industrial dispute, select one person from each of the two panels constituted under sub-section (7), and persons so selected, together with the chairman, shall be deemed to have constituted the labour court in respect of that specific industrial dispute:

provided that the chairman may select any member from either of the panels as a member of the labour court in respect of more than one such case pending before the labour court.

(10) A labour court shall have exclusive jurisdiction to:

(a) Adjudicate and determine and industrial dispute or any other dispute or any question which may be or has been referred to or brought before it under this Act.

(b) Enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the government;

(c) Try offences under this Act; and

(d) Exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this act or any other law

(11) If any member of the Labour court is absent at the time of its constitution or is absent at the time of its constitution or absent from or is absent at the time of its constitution or absent from or is otherwise unable to attend, any sitting of the court, whether at the beginning of

the hearing of a case or during the continuance of the hearing thereof, the proceedings of the court may begin or continue, as me case may be, in his absence and the decision or award of the court may be given in the absence of such member ; and no act, proceeding decision or award of the court shall be invalid or be called in question merely on the ground of such absence or on the ground of any vacancy in, or any defect in the constitution of, the labour court.

Provided that if any member informs the chairman beforehand of his absence, the chairman shall nominate another member from the panel of the concerned parties:

Provided further that the opinions of the members of both the sides shall be mentioned in the judgment.

(12) The provisions of chapter XXXV of the code of criminal procedure, 1898 (V of 1898) shall apply to a labour court shall be deemed to be a civil court.

(13) All labour courts shall be subordinate to the Tribunal.

6.45 Power & Procedure and powers of labour courts in trial of offences (অপরাধ বিচারের ক্ষেত্রে শ্রম আদালতের ক্ষমতা ও কার্যক্রম)

215. Procedure and powers of labour courts in trial of offences:

(1) Subject to the provisions of this act, a labour court shall, while trying an offence follow as nearly as possible summary procedure as prescribed under the code of criminal procedure.

(2) A labour court shall, for the purpose of trying an offence under this Act, have the same power as the vested in the court of a magistrate of the first class under the code of criminal procedure.

(3) Notwithstanding anything contained in sub-section (2), for the purpose of imposing penalty a labour court shall have the same powers as are vested in a court of session under that code of criminal procedure.

(4) A labour court shall, while trying an offence hear the case without the members.

6.46 Power & Procedure and power of Labour courts in any matter other than trial of offences (অপরাধ বিচার ছাড়া অন্য কোনো বিষয়ে শ্রম আদালতের ক্ষমতা ও কার্যক্রম)

216. Procedure and power of Labour courts in any matter other than trial of offences:

(1) A Labour court shall for the purpose of adjudicating and determining any matter or issue or dispute under this act be deemed to be a civil court and shall have the same powers as are vested in such court under the code of civil procedure, including the powers of-

(a) Enforcing the attendance of any person, examining him on oath and taking evidence;

(b) Compelling the production of documents and material objects;

(c) Issuing commissions for the examination of witnesses or documents;

(d) Delivering ex-part decision in the event of failure of any party to appear before the court;

(e) Setting aside ex-prate decision;

(f) Setting aside order of dismissal made for non-appearance of any party.

(g) In order to save the frustration of purpose of the case property the labour court may pass interim order upon any party.

(2) Subject to this act, no court-fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from a labour court,

(3) A labour curt shall, by notice to be served through process server or special messenger or by registered post or by both the modes, ask the opposite party to file written objection or written statement, if any, within a period not exceeding ten days from the date of filing of the case.

(4) The court may, for reasons to be recorded in writing, extend the time for filing objection or written statement for a period not exceeding seven days in all;

(5) If any party fails to file any written statement or objection within the time specified in the notice or the extended time the case shall be heard and disposed of exporter.

(6) The labour court shall not grant adjournment of the hearing of a case on the prayer of any party for more than seven days in all:

Provided that, if both the parties file application for adjournment, n adjournment for not more than ten days in all may be allowed.

(7) If the party filing the case is absent on the date of hearing, the case shall be dismissed for default. provided that the court shall have jurisdiction to set aside the order of dismissal if any application is made by the petitioner within three months from the date of such order of dismissal of the case.

(8) If the opposite party is absent on the date of hearing, the case shall be heard and disposed of exporter.

(9) A case which is dismissed for default, shall not bar the filing of a fresh case on the same cause of action, provided such case is filed if not otherwise barred, within a period of three months from the date of dismissal.

(10) A Labour court may, on an application filed by all the parties to a case, and after giving a hearing to them, allow the withdrawal of the case at any stage of the proceedings thereof, if it is satisfied that the dispute has been amicably resolved.

(11) An award or decision or judgment of a labour court shall be given in writing and delivered in open court, and a copy thereof shall be given to each party.

(12) An award or decision or judgment of a labour court shall, in every case, be delivered, unless the parties to the dispute given their consent in writing to extend the time-limit, within sixty days following the date of filing of the case:

Provided that no award or decision or judgment of a labour court shall be invalid merely on the ground of delay in its delivery.

6.47 Labour Appellate Tribunal : Formation and Function
(শ্রম আপীল ট্রাইব্যুনাল গঠন ও কার্যক্রম)

218. Settlement by Labour appellate tribunal (শ্রম আপীল ট্রাইব্যুনালের মধ্যে নিষ্পত্তি):

(1) For the purpose of this act there shall be a labour appellate tribunal which shall consist of a chairman, and if the government so deems fit, such number of other members as the government may appoint from time to time.

(2) The chairman and the members, if any, of the tribunal shall be appointed by the government by notification in the official gazette on such. terms and conditions as the Government may determine.

(3) The chairman of the tribunal shall be a person who is or was a judge or an additional judge of the supreme court, and a member of the tribunal shall be a person who is or was a judge or an additional judge of the supreme court or who is or was a District judge for not less than three years.

(4) If the chairman is absent or unable to discharge his functions for any reason, the senior member of the tribunal, if any, shall perform the functions o the chairman.

(5) Where members are appointed in the tribunal, the chairman may for the efficient performance of the functions of the tribunal, constitute as many benches of the tribunal, consisting of one or more members of the tribunal, including himself where necessary, as he may deem fit.

(6) An appeal or any matter before the tribunal may be heard and disposed of by the tribunal sitting in full bench or by any bench there of

(7) Subject to this act, the tribunal shall follow as nearly as possible such procedure as are prescribed under the code of civil procedure, for hearing of appeal by an appellate court from original decrees.

(8) If the members of a bench differ in opinion as to the decision to be given on any point-

(a) The matter shall be decided according to the opinion of the majority, if any; and

(b) If the members are equally divided. they shall state the point on which they differ and the case shall be referred by them to the chairman for hearing on such point by the chairman himself if he is not a member of the beuch, or by one or more of the other members of the tribunal and such point shall be decided according to the opinion of the chairman or member or majority of the members hearing the point, as the case may be.

(9) Where a bench includes the chairman of the tribunal as one o its members and there is a different of opinion among the members and the members are equally divided, the decision of the chairman shall prevail and the decision of the bench shall be expressed in terms of the chairman.

(10) The tribunal may, on appeal, confirm, set aside, very or modify the award, decision or sentence or remand a case to the labour court for re-hearing; and shall, save otherwise provided, exercise all the powers conferred by this act on the labour court.

(11) The decision of the tribunal shall be delivered, within a period of sixty days following the fling of the appeal:

(12) The tribunal shall have authority to punish for contempt's of its authority, or that of any labour court, as if it were a high court division of the supreme court.

(13) Any person convicted and sentenced by the tribunal under sub-section (12) to imprisonment for any period, or to pay a fine exceeding two exceeding two hundred taka, may prefer an appeal to the high court division.

(14) The tribunal may, on its own motion or on the application of a party, transfer any application or proceeding from a labour court to any other labour court.

(15) The tribunal shall have superintendence and control over all labor courts.

Workers Participation in Companies' Profit
কোম্পানির মুনাফায় শ্রমিকের অংশগ্রহণ

6.48 Provisions Regarding Workers Participation in Companies' Profit (কোম্পানির মুনাফায় শ্রমিকদের অংশগ্রহণ সংক্রান্ত বিধানসমূহ)

232. Application of the chapter (অধ্যায়ের প্রয়োগ):

(1) This chapter shall apply to all establishments which are companies engaged in industrial undertakings which satisfy any one of the following conditions, namely :

(a) The number of workers employed by the company in any shift at any time during a year is one hundred or more;

(b) The paid-up capital of the company as on the last day of its accounting year is one crore taka or more;

(c) The value of the fixed assets of the company at cost as on the last day of the accounting year is not less than two crore taka or more.

(2) The Government may, by notification in the official Gazette apply this chapter to such othe companies as it may specify therein.

233. Special definitions (বিশেষ সংজ্ঞা):

(1) In his chapter, unless there is anything repugnant in the subject or context,:

(a) 'Participation fund' means the workers 'participation fund established under this chapter;

(b) 'Welfare fund' means the worker's welfare Fund established under this chapter;

(c) 'Company' means a company within the meaning of the companies act. 1994, and includes-

(i) a body corporate established by or under any law for the time being in force;

(ii) any institution, organization or association whether incorporated or not, declared by the Government in the official Gazette to be a company for the purpose of this chapter;

(d) 'Fund' means the Participation Fund and the welfare fund;

(e) 'Board' in relation to participation fund and welfare fund, means a board of trustees constituted under this chapter;

(f) 'Profits' in relation to a company, means such of the net profits as defined in section 87c of the companies act, 1994 as are attributable to its business, trade, undertakings or to her operations in Bangladesh;

(g) 'Industrial undertaking' means an establishment which involves the use of electrical, mechanical, thermal, unclear or any other form of energy transmitted mechanically and not generated by human or animal agency and which is engaged in any one or animal agency and which is engaged in any one or more of the following operations, namely;

(i) the subjection of goods or materials to any manufacturing, assembly, finishing or other artificial, natural process, which changes their original condition or adds to their value;

(ii) ship-building;

(iii) the transformation, generation, conversion, transmission, or distribution of electrical energy including hydraulic power; and

(iv) the working of a mine, oil well or any other source o mineral deposit, including blending, refining and purification of oils and gases;

(v) the marketing and distribution of gas or oil;

(vi) the carriage of men or goods by sea or air and includes any other operation which the government may, by notification in the official Gazette, declare to be an industrial undertaking for the purposes of this chapter;

(h) 'Worker' in relation to a company, means an employee of the company, whatever be his designation o position, who has been in the employment of the company for a period of not less than six months. ; but does not include any such person-

(i) Who is employed in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity exercises either by nature of the duties attached to the office or by reason of power vested in him, functions mainly of managerial or administrative nature.

(2) In this chapter, 'paid-up capital' and the 'value of fixed assets' exercises, either by company situated in Bangladesh but incorporated outside Bangladesh b e construed as the 'paid-up capital' and the 'value of fixed assets' of the company.

234. Establishment of Participation Fund and welfare fund (অংশগ্রহণ তহবিল ও কল্যাণ তহবিল স্থাপন):

(1) Every Company to which this chapter applies shall-

(a) Establish a workers' Participation Fund and a workers' Welfare Fund in accordance with this chapter within one month of the date of which the chapter becomes applicable to it; and

(b) Pay every to the participation fund, and the welfare fund, not later than nine months from the close of that year, five percent of its net profits during such year, the proportion of the payment to the participation Fund and the welfare fund being 80:20.

(2) The amount paid to the Funds under sub-section (1) (b) in relation to a year shall be deemed to have been allocated to the funds on the first day of the next succeeding that year.

235. Management of Funds (তহবিলদ্বয়ের ব্যবস্থাপনা):

(1) As soon as may be, after the establishment of the participation fund and the welfare fund, there shall be constituted a board of trustees, consisting of the following members namely;

(a) Two persons nominated by the collective bargaining agent and if there be no collective bargaining agent in the company, two persons elected by the workers of the company from amongst themselves; and

(b) Two persons nominated by the management of the company of whom at least one shall be a person from the accounts branch of the company.

(2) The member shall elect for one year a person to be the chairman of the board alternately from amongst the members under sub-section (1) (a) and under sub-section (1) (b) the first chairman being from amongst the members under sub-section (1) (b).

(3) The board shall manage and administer the funds in accordance with the provisions of this chapter and any rules made in this behalf.

(4) The board shall, in the exercise of its powers and performance of its functions, be subject to such directions by the Government as may, from time to time, give.

(5) The Government, if it is of opinion that the board or a member of the board has been persistently failing in the performance of his or its functions or has generally been acting in a manner inconsistent with the objects and interests of the funds may after giving such member or, as the case may be, the board an opportunity of showing case against it, by order-

(a) Remove such member from his office or direct that the board shall stand superseded for such period as may be specified in the order, and

(b) Direct that, pending the election or nomination of a person in place of the members removed from office or, as the case may be the reconstitution of the board, shall be exercised and performed by a person specified in the order

(6) Upon the super session of a board under sub-section (5) the members in that board shall cease to hold office and references to the board in this chapter and the rules shall be construed as references to the officer specified in the order.

(7) Before the expiry of the period of suppression, the board shall be re-constituted in accordance with the provisions of this chapter so as to enable it be take over its functions upon the expiry so

such period.

236. Penalty (শাস্তি):

(1) Where any company fails to comply with the provisions of section 234, the Government may, by order in writing, require it to comply with those provisions within such time as may be specified in take order.

(2) If the company in relation to which an order has been made, fails to comply therewith within the time specified therein, every director, manager or other officer responsible for the management of the affairs of the company shall, if the Government, by order so directs pay by way of penalty a sum which may extend to ten thousand taka and in the case of continuing failure, a further sum which may extend to one thousand taka for everyday after the first during which the failure continues.

(3) A penalty imposed by an order under sub-section (2) shall, if it is not paid within the time specified in the order be recoverable as a public demand.

(4) The Government may, upon an application made in this behalf by any person aggrieved by an order made under sub-section (1) or (3) within a period of six months from the date of the order, review the order and may, upon such review, pass such orders as it may think fit.

237. Power to call for information (তথ্য তলবের ক্ষমতা): The Government may, at any time call upon a company or a Board of Trustees to furnish it with such information or documents, including the records of the proceedings of the company or the Board, as may be relevant or useful for the purposes of, or necessary, for ensuring proper compliance with, the provisions of this chapter and the rules made in this behalf.

238. Settlement of disputes, etc. (বিরোধ নিষ্পত্তি, ইত্যাদি):

(1) Any differences arising between the board and the company relating to the administration of the funds shall be reported to the Government whose decision thereon shall be final.

(2) All claims of a worker relating to the benefits of the funds, where against the board or the company, shall be settled in the same manner as is provided for in chapter, X, for the settlement of claims arising out of claims arising out of deductions from wages.

240. Investment of Participation Fund (অংশগ্রহণ তহবিলের বিনিয়োগ):

(1) The amount allocated or accruing to the participant in fund shall be available to the company for its business operation.

(2) The company may request the board to utilize the amount in the Participation fund for investment under sub-section (11) and the board may decide to so invest the amount.

(3) The company shall pay to the participation fund in respect of the amount in the participation fund available to it for its business operations as aforesaid interest at the rate of two and a half percent above the bank rate or seventy five percent of the rate at which dividend is declared on its ordinary shares, whichever is higher.

(4) In case there is more than one class of ordinary shares on which deferent rates of dividend have been decclared, then the weight average of the different rates of dividend shall be taken for the purpose of determining the rate of interest payable under sub-section (3)-

(5) The interest to the participation fund shall accrue on and from the first day of the year next succeeding the year in which the fund becomes applicable to the company.

(6) When the company does not wish to utilize the amount available to it under sub-section (1), interest of the rate aforesaid shall be payable by the company for the period between the date of allocation of any amount to the participation fund and the date of its investment under sub-section.

(7) If, at any time after the establishment of the participation fund, the company raises any additional capital otherwise than through the issue of bonus or bonus shares, the Participation fund shall have the first option to convert any amount available to the company under sub-section (1), or any of the assets of the participation fund into ordinary equity capital up to a ceiling of twenty percent of the paid-up capital, whichever is less.

Explanation: In this sub-section 'additional capital, does not include any capital offered or to be offered to foreign participant of the company.

(8) For the exercise of the right of conversion under sub-section (7), the board shall be given sufficient time to sell assets of the participation fund to realize the amount needed for subscription to the additional issue of capital by the company.

(9) The shares acquired in the manner set out in sub-section (7) shall participate in future bonus and right issues in the same manner as other shares.

(10) The shares acquired in the manner set out in sub-section (7) shall carry voting rights in the same manner as other shares and such voting rights shall be exercised by the board on behalf of the participation fund.

(11) The amount in the participation fund which, under sub-section (2) the company has requested to be utilized for investment under this sub-section may be invested by the board for the purchase of any of the following, namely:

(a) I.C.B Mutual Fund Certificates;

(b) I.C.B Unit Certificates;

(c) Government securities including Defence and postal saving Certificate;

(d) Any other securities approved for the purpose by the Government.

241. Qualification of Eligibility to benefits (সুবিধা প্রাপ্তির যোগ্যতা):

(1) All workers shall be eligible to the benefits of this chapter and to participate in the funds.

(2) A worker not competing six months of employment with the company during a year of account shall not participate in the funds in respect of that year.

242. Utilization of participation fund (অংশগ্রহণ তহবিলের ব্যবহার):

(1) Of the total amount deposited in the participation fund every year, two-thirds shall be distributed in equal proportion to all workers in cash and one-third shall be invested in accordance with the provisions to all workers.

(2) If a worker voluntarily leaves the employment of the company he shall receive benefits of the participation fund and the welfare fund as admissible to him under this chapter.

(3) A worker whose services are terminated otherwise than by way of dismissal shall be at per with a worker who retires from the service of the company.

(4) A worker who is dismissed from service shall forfeit his share in the funds.

(5) In the event of transfer of a worker from one office or unit of a company to another office or unit of that company, he benefit accrued to the worker shall be transferred to the funds of the office or unit to which he is transferred and his service in the previous office or unit shall be counted towards his entitlement to the benefits of the funds of the office or unit to which he is transferred.

(6) A worker in the event of his retirement or his nominated beneficiary, in the event of his earth while in the employment of the company, shall receive full benefit of this chapter.

243. Utilization of welfare fund (কল্যাণ তহবিলের ব্যবহার): The amounts deposited in the welfare fund shall be utilized for such purposes and in such manner ass the board may decide and the board shall inform the government of such decision.

248. Audit of accounts of the fund (তহবিলদ্বয়ের হিসাব নিরীক্ষা কাজ): The funds shall be audited annually at the company's expense in the same manner s the accounts of the company are audited:

Provided that the Government may, at its own cost, appoint independent accountants for a special audit of the accounts of the funds.

249. Funds' benefits to be in addition to other benefits (তহবিলদ্বয়ের প্রদত্ত সুবিধা অন্যান্য সুবিধার অতিরিক্ত হবে): The benefits to a worker under this chapter shall be in addition to, and not in derogation or substitution of, any other benefits to which the worker may be untitled under any other law, contract, terms and conditions of employment or otherwise.

EXERCISE

1. What is production process?
2. What is factory? *[NU 2001, 2009]*
3. What is meant by public utility service?
4. Define 'worker' according the Bangladesh Labour Act. *[NU BBA 2014]*
5. What is trade union? *[NU BBA 2013]*
6. What is meant by strike?
7. What is meant by commercial establishment?
8. What is wages?
9. Who is an employer?
10. What is collective bargaining agent? *[NU BBA 2015]*
11. What is lock out?
12. What is lay-off?
13. What is meant by industrial establishment?
14. What is industrial dispute? *[NU BBA 2012, 2015]*

15. Who is an worker?
16. Mention the classification of workers and period probation.
17. Write the provisions regarding service book.
18. Describe the procedure of leave to workers. *[NU BBA 2013]*
19. Mention the provisions regarding clasure of establishment.
20. Discuss the rights of laid-off workers for compensation. *[NU 2013]*
21. Mention the provisions regarding retrenchment of workers.
22. Describe the rules regarding termination of employment of workers. *[NU 2014]*
23. Write the provisions regarding punishment for conviction & misconduct.
24. Write the procedure for panishment of workers. *[NU 2014]*
25. Write the provisions regarding the oppointment of children & adolscent. *[NU BBA 2009, 2013]*
26. Discuss the probations of employment of children and adolesent according to Bangladesh Labour Act 2006. *[NU 2013, 2014]*
27. Write the provisions regarding the working hours for adolescent.
28. Discuss the provisions regarding the health safety system of workers. *[NU BBS 2004, 2013]*
29. Mention the provisions regarding the safety to workers according to Bangladesh labour act. 2006. *[NU 2004, 2007, 2012, 2013]*
30. Write the special provisions regarding health, hygience and safety.
31. Discuss the provisions regarding the walfare arrangement of workers. *[NU 2001, 2003, 2012]*
32. Write the provisions regarding working hours & leaves of workers. *[NU 2015]*
33. Discuss the right to get maternity benifit. *[NU 2014]*
34. Discuss the rules of Bangladesh labour Act, 2006 regarding deduction from wage of workers.
35. What conditions are to be fulfilled what deducting from wage? *[NU 2013]*
36. Discuss the method of registration of trade union.
37. How the registration of a trade union may be cancealled?
38. What are the disqualification for a member of trade union? *[NU 2012]*

39. Discuss the unfair labour practices on the part of the employers.
40. Mention the unfair labour practices on the part of workers.
41. Mention the responsibilities of a registered trade union.
42. What is meant by collective bargaining agent.
43. How a collective bargaining agent may be appointed?
44. In what circumstances trade union federation work as collective bargaining agent? *[NU 2014]*
45. Mention the formation procedure of participation committee.
46. Discuss the method of settlement or resolution of industrial dispute. *[NU 2015]*
47. Describe the formation procedure & function of labour court.
48. What do you mean by illegal strike and lock-out in Bangladesh Labour Act, 2006. *[NU 2013]*
49. Describe the powers & procedure of labour court in trading offences. *[NU 2014]*
50. Mention the formation and functions of labour appellate tribunal.
51. Write the provisions regarding workers participation in companies profit.

CHAPTER-07

The Trade Marks Act, 2009

Syllabus: Registration procedures and duration, Effects of registration, Use of trademark.

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7.1 Introduction
(ভূমিকা)

A trademark is a legal protected name, sign or symbol which is an integral part in case of industry; it distinguishes the goods of one enterprise from another. In a country, trademark protection rights can be established through registration or use or both.

In Bangladesh, trademark registration is not compulsory but in practice, no trademark is generally entitled to get protection from the law of court without registration; a certificate of a registered trademark from a proper government authority is deemed as a prima facie evidence. This paper focuses on trademark, trademark protection and it's obtaining procedure in Bangladesh; legal remedies in case of infringement.

Trademark requires statutory protection to ensure exclusive right to the proprietors. It is also necessary for smooth industrial and economic development of a country. In Bangladesh, **the Trademark Act 2009** provides protection to the trademark proprietors. The Trademark Rules 1963 is also operative here which is very poor statutory support in case of ensuring trademark protection with compliance international treaty.

Therefore, the present laws fail to fulfill the demands of present digital based society. This paper focuses the present situation of trademark protection in Bangladesh; it also determines whether the existing trademark laws provide standard protection to the proprietor of trademarks or service marks; it also highlights the drawbacks of the existing laws and gives the ways to remove them.

7.2 Definition of Trademark
(ট্রেডমার্ক-এর সংজ্ঞা)

Trademark is a symbol or sign which indicates the source of goods; it distinguishes the goods or services of one entrepreneur from another. Under the Trade Mark Act, 2009, "**Trademark**" means a registered trade mark or a mark used in relation to goods or service or a mark used or proposed to be used in relation to any service or goods indicating a connection in the course of trade between the goods and the person having the right, either as proprietor or as registered user, to use the mark (Section 2(8)). In Bangladesh, the term "**trademark**" includes service mark too (section 2(8) (a) (ii).

?	Define of Trademark.

7.3 Meaning of Trademark (ট্রেডমার্ক-এর অর্থ)

A trademark is any symbol, word, number, phrase, design, or any combination thereof which is used to identify the source of goods or services. The Trademarks Act, 2009 defines the term in Section 2(8). It provides for the following classification of marks:

- Registered Trademark
- Mark
- Certification Trademark

A trademark is:

- a registered trademark or a mark used in relation to goods so as to indicate a connection in the course of trade between the goods and the person having the right as proprietor to use the mark;
- a mark used in relation to a service so that it leads to the indication that the person has the right to use the mark in the course of trade as a proprietor;
- a mark used or proposed to be used (in future) in relation to any service or goods indicating a connection, between the goods and the person having the right, either as proprietor or as registered user (permitted user), to use the mark.

A trademark is generally used to identify the source for goods or services. Bangladesh has adopted the 9th Edition of NICE classification of goods and services. Hence, there are total 45 classes of goods and services, out of which 1-34 are goods, and 35-45 are services.

?	What is Trademark?

7.4 Historical Background (ঐতিহাসিক পটভূমি)

Bangladesh gains its independence in 1971 thorough a liberation war with West Pakistan. Prior to 1947, it was the part of Indian subcontinent under the British Regime and British Rules were applicable in most cases or they passed new enactments for the subcontinent. There were no specific enactments in British India before 1889. At that time, trademark protection was ensured under the different enactments like the Penal Code 1860, the Specific Relief Act, 1877. In 1889, the then British rulers first enacted the Merchandise Marks Act, 1889 and the Trade Marks Act, 1940 for protecting the trademarks.

The Act of 1940 was enacted in British-India by following the Trade Mark Act, 1938 of England. Bangladesh inherited the Merchandise Marks Act, 1889 and the Trade Marks Act, 1940 from Pakistan by the independence of 1971. These two laws had ensured trademarks protection in Bangladesh for long time. In 2008, both, the Merchandise Marks Act, 1889 and the Trade Marks

Act, 1940 were repealed by the Trademark Ordinance, 2008 but this law was also repealed by the Trademarks Act, 2009. The present legal basis of trade mark protection in Bangladesh is the Trademark Act of 2009 (herein referred to as the 2009 Act) and Trademark Rules 1963. Bangladesh is also a signatory to the following international agreements:

- The World Intellectual Property Organization, since May 1985 (herein referred to as WIPO)
- The Paris Convention for the Protection of Industrial Property, since March 1991(herein referred to as Paris Convention)
- The Agreement on Trade-Related Aspects of Intellectual Property Rights, since January 1995(herein referred to as TRIPS Agreement)

Bangladesh follows the international classification of goods and services under the Nice Agreement (Ninth Edition). Here the classes of goods and services 01- 45 are in force. The registration of Service Marks System has been included in the Act, 2009 vide S. R. O. No.211-Law/2008 dated June 30, 2008, w.e.f July 01, 2008. At present, any person claiming to be the proprietor of a service mark may file an application for registration of any service mark under class-35 to 45. ,

In Bangladesh, the **Department of Patents, Designs & Trademarks** is the administrative authority under the Ministry of Industries deals with the trademark & service mark registration etc. The **Head Office of Trademarks Registry** is in Dhaka (91, Motijheel C/A (5th Floor), Dhaka-1000). A regional office relating to Trademarks is in Chittagong.

?	Discuss the Historical Background.

7.5 Trademark Protection by Registration
(নিবন্ধকরণ দ্বারা ট্রেডমার্ক সুরক্ষা)

Trademark protection right is an indispensable right to trademark proprietor. It must be ensured for a smooth industrial development and to earn profit by using it. It claims exclusive rights. According to Article 16.1 of the TRIPS Agreement, the owner of a registered trademark must be granted an exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered if such use would result in a likelihood of confusion.

In the case of use of identical sign for identical goods or services, a likelihood of confusion must be presumed. In Bangladesh trademark protection is ensured to the trademark proprietor by registration. Any other person than a registered proprietor, can get trade protection as registered users, or by grant of license, or by means of assignment or transmission. Here the provisions of infringement and falsification of trademarks also play an important role in providing trademark protection to the trademark owners.

The law relating to trademarks is against trafficking in trademarks. Certain marks and brands qualify (by virtue of their extensive use and popularity) to be known as well-known marks. Articles 16.2 and 16.3 of the TRIPS Agreement require protection to the well-known marks. Under the 2009 Act, well known mark (even unregistered) also gets protection.

?	Describe the Trademark Protection by Registration.

7.6 Conditions of Trademark Registration (ট্রেডমার্ক নিবন্ধনের শর্তাদি)

In order to get trademark registration, a mark must be inherently distinctive or distinctive through use. An arbitrary marks (apple for computer), fanciful mark (KODAK) or suggestive mark (FRIDGEDAIRE as applied to refrigerators) etc are treated as distinctive mark. Actually any sign capable of distinguishing the goods or services of one undertaking from those of other undertakings (thus including service marks) shall be eligible for getting registered as a trademark. (TRIPS Agreement, Art. 15.1).

In Bangladesh the basic requirements of a mark to be registered are maintained with the compliance of International Treaties like Paris convention or TRIPS Agreement. Besides, the following mark or part of mark shall not be registered as a trademark:

(i) Which comprises or consists of any scandalous or obscene matter;

(ii) The use of which would be contrary to any law for the time being enforce;

(iii) The use of which would be likely to deceive or cause confusion; or

(iv) Which contains any matter likely to hurt the religious susceptibilities of any classes of the citizen of Bangladesh;

(v) Which is identical with, or is an imitation of, or contains as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmarked adopted by, any state or international organization created by an international convention, charter or other instruments (the 2009 Act, section 8).

No trademark shall be registered in respect of any goods or services if it is identical with or confusingly similar to, or constitutes a translation or a mark trade description which is well-known in Bangladesh (for example TATA mark well-known in Bangladesh) for identical or similar goods or services of another enterprise (the Act, 2009, section 10(4)).

?	Explain the Conditions of Trademark Registration.

7.7 Procedure for Registration
(নিবন্ধনের শর্তাদি)

Any person claiming to be the proprietor of a Trade Mark or Service Mark used or proposed to be used by him or them, who desire to register, he shall apply in writing to the Registrar in the prescribed manner for the registration of his trademark or service mark (the 2009 Act, sec. 15). Separate application is required for every class of goods or services.

Every application made under section 15 of the Act may be submitted to the Head Office of the Department or any branch of the Trademarks Registry having jurisdiction over the principal place of business in Bangladesh of the applicant or, in case of the joint applicants, the principal place of business in Bangladesh, whose name is first mentioned in the application, as having a place of business in Bangladesh is situated.

There are various steps involved in the procedure for registration:

Step 1: FILING OF APPLICATION – SECTION 15

- Any person claiming to be the proprietor can file an application for registration of a mark used or proposed to be used.
- The person(s) shall file separate application for each class of goods or services.
- The application must be filed at the Head office or any branch of the Trademark Registry having territorial jurisdiction over the principal place of business. If the person does not carry on business in Bangladesh, the application must be filed in the office having territorial jurisdiction over the place mentioned in the address for service in Bangladesh.
- Requirements:
  - ✓ Name of the Applicant(s)
  - ✓ Address and Nationality
  - ✓ Specification of goods
  - ✓ Fees: 3500 taka
  - ✓ Form- "TM-1".

Step 2: ACCEPTANCE – SECTION 15

- The Registrar may accept the application absolutely and go ahead with further process.
- He may refuse to accept the application recording the grounds of refusal.
- He may conditionally accept the application, i.e. subject to amendments, modifications, conditions or limitations.

Step 3: ADVERTISEMENT – SECTION 17

- After the conditional or absolute acceptance of the application, the Registrar may advertise the application in the prescribed manner along with the prescribed fees.

- If there are any corrections in the application under Section 19, it will be advertised again after such correction to the satisfaction of the Registrar
- Form- "TM-9"
- Fees- 1000 taka.

Step 4: OPPOSITION – SECTION 18

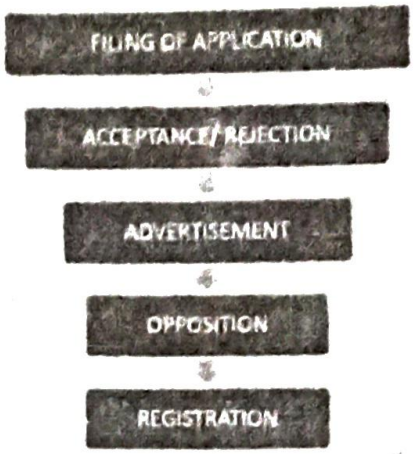
- Within 2 months from the date of advertisement of the application, any person may oppose the same by serving due notice to the Registrar via form TM-5 along with the prescribed fees (2000 taka).
- He shall, within 1 month from the date of receipt of the notice, serve a copy of the same to the applicant.
- Thereafter, the applicant shall file a counter within 2 months from the date of receipt of such notice to him via form TM-6 and the prescribed fees (2500 taka). If a counter is not filed, the application shall be deemed to have been abandoned.
- The Registrar shall serve a copy of such counter to the opponent.
- All the evidences upon which the applicant and opponent rely shall be submitted in the prescribed time and manner to the Registrar, and they shall be granted an opportunity of being heard if so desired upon application via form TM-7 or TM-25 along with prescribed fees (1000 taka).
- The Registrar, after following due process of opposition shall decide whether to accept, conditionally accept, or reject the application.
- Notwithstanding anything contained in the Act, the opposition proceedings must be wound up/ concluded in 120 working days.

Step 5: REGISTRATION – SECTION 20

- If the application is accepted or not opposed or the notice period of opposition has expired, or it has been opposed and the decision is in favour of the applicant, the trademark shall be registered by the Registrar.
- The applicant shall be issued a certificate of registration with the seal of the trademark registry.
- Such certificate shall be issued within 150 working days from the date of filing of application.
- The duration of the trademark shall be of 7 years, and can be renewed by paying the prescribed fees, from time to time.
- The Registrar may renew the registration of the trademark for 10 years from the date of expiration of original registration or the last renewed registration on application by the applicant.

It takes around 24-36 months to get a trademark registered in Bangladesh in a smooth case.

Workflow:



?	Discuss the Procedure for Registration.

7.8 Rights conferred by Registration
(নিবন্ধনকরণ দ্বারা প্রদত্ত অধিকার)

Registration of a trademark confers the following rights under Section 25:

- Exclusive right to use the trademark in relation to those goods and services for which it has been registered.
- Obtain relief against infringement of the same in accordance with the Act.

It also provides that no person except the registered proprietor/ owner of the trademark shall use the same in respect of the goods and services for which it is registered under the Act, without the consent of the registered owner.

The Act, just like Indian law, also incorporates the common law remedy of "Passing Off" in its Section 24. It provides that no infringement action be instituted for an unregistered Trade Mark. Secondly, nothing in the Act shall be deemed to affect the right of action against any person for passing off goods or services of another person and any other related remedies.

?	Discuss the Rights conferred by Registration.

7.9 Infringement
(চুক্তিভঙ্গ)

Section 26 deals with the Infringement of Trademarks. Usage by a person other than a registered proprietor of the identical or similar trademarks, the Trade Mark deemed to be infringed. On the other hand, Section 27 deals with the acts that do not amount to infringement. Lawful user, permitted use, etc. are provided in the section.

The 2009 Act gives the registered proprietor of a trademark in respect of any goods the exclusive right to the use of trademark in relation to those goods. That right is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof using by way of permitted use.

Following are the circumstances under which a person is deemed to have infringed a registered trademark (the 2009 Act, sec.26):

1. Where a person uses a trademark which is identical or similar to the registered trademark used in the course of trade for the similar goods or services not being a "**registered proprietor**" or "**permitted user**" and cause confusion on the part of the public.
2. Where the registered trade mark is used in the course of trade for the goods or services which are not similar, but has reputation in Bangladesh and the use of the mark by the person without due cause, takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark.
3. Where a person who is not being duly authorized by the registered proprietor or a registered user uses the trade mark on a material intended to be used, for labeling or packaging goods, as business papers or for advertising goods or services.
4. Where a person not being a "**registered proprietor**" or "**permitted user**" uses a registered well-known trademark for the identical or similar goods or services for which the mark has been registered.
5. Where a person not being a "**registered proprietor**" or "**permitted user**" uses a registered well-known trademark for the goods or services not being identical with or similar to those in respect of which the mark has been registered, by using of the mark in relation to those goods or services, would indicate a connection between those goods or services and the owner of the registered well-known mark and that the interests of the owner of the registered well-known mark are likely to be damaged by such use.

?	Describe the Infringement.

7.10 Assignment and Transmission
(নিয়োগ ও সংক্রমণ)

The Act, in Chapter V, comprehensively provides for assignment and transmission of a registered trademark by the registered proprietor, with or without the goodwill (Section 34). An unregistered trademark shall not be assignable or transmissible except along with the goodwill of the business concerned (Sec 35) under certain circumstances provided in the same section, it can be assigned or transmitted without the goodwill. Moreover, Section 38 incorporates assignment and transmission otherwise than in connection with the goodwill with conditions of fulfillment attached.

?	Explain the Assignment and Transmission.

7.11 Offences and Penalty
(অপরাধ এবঙ দণ্ড)

Section 71 firstly discloses the meaning of applying trademarks and trade descriptions, and secondly Section 72 mentions the circumstances when the Trade Marks are falsified or falsely applied. The penalties under the Act are as under:

- **Section 73:** Penalty for falsifying or falsely applying Trademark: Imprisonment may extend to 2 years, but not less than 6 months, and/or fine which may extend to 2 lac taka, but not less than 50 thousand taka. For a second or subsequent conviction, the imprisonment would range from a minimum of 1 year to 3 years, and/or fine extendable up to 3 lac taka, but not less than 1 lac taka.
- **Section 74:** Penalty for selling goods to which a false trademark or trade description is applied: Imprisonment for a term up to 2 years, and/or fine. For a second or subsequent conviction, imprisonment for a term up to 3 years, and/or fine.
- **Section 76:** Penalty for falsely representing a trademark as registered: Imprisonment for a term up to 1 year, but not less than 6 months, and/or fine up to 1 lac, but not less than 50 thousand taka.
- **Section 77:** Penalty of improperly describing a place of business as connected with the Trademarks office: Imprisonment for a term which may extend to 1 year but not less than 6 months, and/or with fine which may extend to 1 lac taka but not less than 50 thousand taka.
- **Section 78:** Penalty for falsification of entries in the Register: Imprisonment for a term which may extend to 1 year but not less than 6 months, and/or fine, which may extend to taka 1 lac (84,600 INR approx.) but not less than 50 thousand taka.

?	Discuss the Offences and Penalty.

7.12 Passing Off and Protection of Unregistered Trademark
(নিবন্ধনভুক্ত ট্রেডমার্ক-এর বন্ধ ক্ষণস্থায়ী এবং সুরক্ষা)

In Bangladesh, unregistered trademarks or service marks having reputation or well known to the people through the use can get protection in case of passing off (the 2009 Act, sec.24 (2). Passing off is a common law concept. It refers to the misrepresentation of the goods or services of one which is offering as coming from another party. This false impression is created through use of another provider's recognizable trademark, either by the production of an identical copy, or a closely comparable mark.

The passing off action depends upon the principle that nobody has a right to represent his goods as the goods of another. In other words, a man is not entitled to sell his goods or services under the pretence that they are those of another person.

Passing off occurs when one trader attempts to pass off his goods by misrepresenting them so as to make the consumers believe that his goods are the same as those of another trader. For example, using a mark "**Rata**" on a shoe creates a belief that it is a "**Bata**" one.

Passing off is not defined in the 2009 Act. It is referred to in sections 24(2), 96(4), and 97 of the Act. Section 24(2) states that the rights of action shall not be affected against any person for passing off goods or services as the goods or services of another person or the remedies in respect thereof.

Any proprietor of a trademark, registered or unregistered, can bring an action against any person for passing off his goods or services; he is entitled to remedies thereof; he can get damages or an injunction or an order for delivery-up of infringing labels and marks for destruction or erasure as relief.

Section 96(d) provides that a suit for passing off arising out of the use by the defendant of any trademark which is identical with, or, deceptively similar to, the plaintiff's trademark, whether registered or unregistered, shall be instituted in any court not inferior to a District Court having jurisdiction to try the suit.

?	Describe the Passing Off and Protection of Unregistered Trademark.

7.13 Remedies for Infringement
(লঙ্ঘনের প্রতিকার)

In compliance with the Paris Convention and TRIPS Agreement Bangladesh provides both civil and criminal remedies for infringement of the right of a registered proprietor of a trademark, which are as follows:

(a) **Civil remedies:** The Trademarks Act states that infringement suits must be instituted before the appropriate District Court having jurisdiction. In the case of infringement suits, the trademark must be registered in Bangladesh as per Section 24(1) of the Act. The Act also provides for passing off actions for unregistered trademarks. The period of limitation for filing a suit for infringement of a trade mark is three years from the date of infringement.

The relief which a court may grant in any suit for infringement and passing off:-

(i) An injunction restraining further use of the infringing mark.

(ii) Damages or an account of profits.

(iii) An order for delivery-up of infringing labels and marks for destruction or erasure.

The plaintiff is entitled to the above relief both in an infringing and passing off action. Although civil remedies are available for both registered and unregistered trademarks, it can be extremely difficult to prove passing off actions and obtain relief for unregistered trademarks.

(b) **Criminal prosecution/ Remedies:** The following are criminal offences punishable under the Act, 2009:

- Applying a false trademark so as to mislead consumers about the origin of the goods;
- Counterfeiting a trademark without assent of the proprietor of the trademark;
- Making or possessing any instrument for the purposing of counterfeiting a trademark;
- Applying any false trade description to goods or services;
- Applying false indication of country to goods or services as regards the place of production or manufacture of them; and
- Selling, or exposing or possessing for sale or any purpose of trade or manufacture any goods bearing a false trade mark or description.

The punishment for above-mentioned is imprisonment for up to two years but not less than six months or a fine up to taka two lac but not less than fifty thousand, or both and for a second or subsequent conviction, imprisonment up to three years but not less than one year or fine up to taka three lac but not less than one lac, or both. The courts also have the power to set the prison term and the amount of any fine.

All the above mentioned offences shall be triable by the Metropolitan Magistrate or Magistrate of the first class.

?	Explain the Remedies for Infringement.

7.14 Original Act
(মূল আইন)

Trademarks Act, 2009

Act No. XIX of 2009

[24 March, 2009]

An Act to repeal, amend, consolidate and re-enact the laws relating to trademarks.

Whereas, it is expedient and necessary to repeal, amend, consolidate and re-enact the laws relating to trademarks;

It is hereby enacted, as follows:

7.15 Some Important Definition as Described in the Law
(আইনে বর্ণিত কতিপয় গুরুত্বপূর্ণ সংজ্ঞা)

2. **Definitions.** In this Act, unless there is anything repugnant in the subject or context,

1. **Priority date (অগ্রাধিকার তারিখ):**

(1) "**Priority date**" means the date of earlier application that has been accepted in the Paris Convention as the basis of priority of the right of trademarks for goods and services;

2. Permitted use (অধিকার ব্যবহার):

(2) "**Permitted use**", in relation to a registered trademark, means the use of a trademark by a registered user of the trademark in relation to goods or services complying with any condition or restriction subject to which the trademark is registered;

3. International Classification (আন্তর্জাতিক শ্রেণিবিভাগ):

(3) "**International Classification**" means the classification adopted by the World Intellectual Property Organisation or International Classification according to NICE Agreement Concerning the International Classification of Goods and Services for the purposes of the Registration of Marks;

4. District Court (জেলা আদালত):

(4) "**District Court**" means the Court of the District Judge and also includes the Court of an Additional District Judge or a Joint District Judge;

5. False trade description (মিথ্যা ট্রেড বর্ণনা):

(5) "**False trade description**" means

(a) to use a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied;

(b) to make such an addition, effacement or alteration to a trade description as regards the goods or services as are untrue or misleading;

(c) to indicate in a trade description that the accurate amount of the goods which are contained in the container is more than the amount of the standard yards or standard meters;

(d) to apply any marks or arrangement or combination thereof to any item of goods in such manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are; or

(e) to use any false name or initials of a person to a trade description of goods or services in such manner as if such name or initials were

(i) not a trademark or a part of a trademark; and

(ii) identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description and who has not authorised the use of such name or initials; and

(iii) either the name or initials of a fictitious person or of some person not bona fide carrying on business in connection with such goods or services; and any trade description, though it is a trademark or a part of a trademark, shall be considered as false trade description within the meaning of this Act;

6. **Tribunal (ট্রাইব্যুনাল):**

(6) "**Tribunal**" means the Registrar, or, as the case may be, the Court before which any proceeding is pending;

7. **Trade description (ট্রেড বর্ণনা):**

(7) "**trade description**" means any description, statement or other direct or indirect indication as to

(a) the number, quantity, measure, gauge or weight of any goods or services; or

(b) the standard of quality of any goods or services, according to a classification commonly used or recognized in the trade; or

(c) the strength, performance or qualities of any goods, if it is 'drug' as defined in the Drugs Act, 1940 or "food" as defined in the Pure Food Ordinance, 1959; or

(d) the place or country in which or the time at which any goods or services were made or produced; or

(e) the name and address or other indication of the identity of the manufacturer or of the person for whom the goods or services are manufactured; or

(f) the mode of the manufacture or producing any goods or services; or

(g) the material of which any goods or services are composed; or

(h) any existing patent, privilege or copyright relating to any goods or services and includes,

(i) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the matters referred to in clause (a) to (g) as trade description;

(ii) The description as to any imported goods contained in a bill of entry or shipping bill;

(iii) Any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

8. **Trademark (ট্রেডমার্ক):**

(8) "**trademark**" means

(a) in relation to Chapter X of this Act, other than section 77

(i) a registered trademark or a mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and the person having the right as proprietor to use the mark;

(ii) a mark used in relation to a service so that it may be indicated that the person has the right as proprietor to use the mark in the course of trade;

(b) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to any service or goods indicating a connection in the course of trade between the goods and the person having the right, either as proprietor or as registered user, to use the mark;

(c) certification trademark;

9. Prescribed (নির্ধারিত):

(12) "**prescribed**" means, in relation to proceedings before the Supreme Court, prescribed by rules made by the Supreme Court, and in other cases, prescribed by rules made by the Government;

10. Registered trademark (নিবন্ধিত ট্রেডমার্ক):

(15) "**registered trademark**" means a trademark included in the Register;

11. registered user (নিবন্ধিত ব্যবহারকারী)

(16) "**registered user**" means a registered user under section 44 of this Act;

12. Registered proprietor (নিবন্ধিত স্বত্বাধিকারী):

(17) "**registered proprietor**" means the person whose name is recorded in the Register as proprietor of the trademark;

13. Goods (পণ্য):

(18) "**goods**" means anything which is the subject of trade or manufacture including agricultural products and herbal plants;

14. Paris Convention (প্যারিস কনভেনশন):

(19) "**Paris Convention**" means the Paris Convention for the Protection of the Industrial Property of March 20, 1883, as last revised;

15. Mark (মার্ক):

(23) "**mark**" includes a device, brand, heading, label, ticket, name, signature, word, letter, symbol, numeral, figurative elements, combination of colours or any combination thereof;

16. Mark (মার্ক):

(24) "**package**" includes any case, box, container, covering, folder, receptacle, casket, bottle, wrapper, label, brand, ticket, reel frame, capsule cap, lid, stopper and cork;

17. Collective mark (সমষ্টিগত মার্ক):

(25) "**collective mark**" means any visible sign designated as such in the application for registration, which

(a) is capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises;

(b) is used by different enterprises under the control of the registered owner of the collective mark; and

(c) is used in respect of goods or services by a group of individuals collectively engaged in the same business as one legal entity;

৯। Collective mark (সমষ্টিগত মার্ক):

(25) "**collective mark**" means any visible sign designated as such in the application for registration, which

(a) is capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises;

(b) is used by different enterprises under the control of the registered owner of the collective mark, and

(c) is used in respect of goods or services by a group of individuals collectively engaged in the same business as one legal entity;

১০। Government (সরকার):

(26) "**Government**", in case of certification trademark, means the Secretary of the administrative Ministry or Division of the Trademarks Registry, and, in other cases, the administrative Ministry or Division;

১১। Associated trademarks (সহযোগী ট্রেডমার্ক):

(27) "**Associated trademarks**" means any trademark which is capable of being or required to be, registered as associated trademarks under this Act;

১২। Certification trademark (সার্টিফিকেট ট্রেডমার্ক):

(28) "**Certification trademark**" means a mark adapted in relation to any goods or services which distinguishes, in the course of trade, the goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from the goods not so certified and which is capable of being registered as such under the provisions of chapter VIII of this Act in respect of those goods or services in the name, as proprietor of certification trademark, of that person;

১৩। Limitations (সীমাবদ্ধতা):

(29) "**limitations**" means any limitations of the exclusive right to the use of a trademark given by the registration of a person as proprietor thereof, and the limitations, as to the mode of use, shall include the marketing of goods or the sectors of providing services within or outside Bangladesh;

১৪। Services (সেবা):

(30) "**services**" means services rendered for money or money's worth in the course of trade or business, but does not include goods; and

১৫। Transmission (হস্তান্তর):

(31) "**transmission**" means transmission under this Act, devolution on the personal representative of deceased person and any other mode of transfer, not being assignment.

7.16 Application for Registration
(নিবন্ধনের আবেদন)

15. Application for Registration (নিবন্ধনের আবেদন):

(1) Any person claiming to be the proprietor of a trademark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trademark.

(2) Separate applications shall be made in respect of every class of goods or services and the applications shall be considered according to the serial of receipt.

(3) Every application under sub-section (1) may be filed at the Head Office of the Department or in any branch office of the Trademarks Registry having territorial jurisdiction over the principal place of business in Bangladesh of the applicant, or, in the case of joint applicants, the principal place of business in Bangladesh of the applicant, whose name is first mentioned in the application, as having a place of business in Bangladesh is situated.

(4) Where the applicant or any of the joint applicants does not carry on business in Bangladesh, the application may be filed in the office of the Trademarks Registry having territorial jurisdiction over the place mentioned in the address for service in Bangladesh as disclosed in the first application, is situated.

(5) Subject to the provisions of this Act, the Registrar may:

(a) accept an application absolutely,

(b) refuse an application recording the grounds for such refusal,

(c) accept an application subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

7.17 Reject the Application
(গৃহীত আবেদন প্রত্যাখ্যান)

16. Withdrawal of Acceptance (গ্রহণযোগ্যতা প্রত্যাহার): (1) Where, after the acceptance of an application for registration of a trademark the Registrar is satisfied,

(a) that the application has been accepted in error, or

(b) that in the circumstances of the case the trademark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

The Registrar may, after giving the applicant an opportunity of being heard, withdraw the acceptance and proceed as if the application had not been accepted.

7.18 Application Acceptance Notice (Advertisement) Issued
(আবেদন গ্রহণের বিজ্ঞপ্তি জারী)

17. Advertisement of Application (আবেদনের বিজ্ঞাপন):

(1) When an application for registration of a trademark has been accepted, whether absolutely or subject to conditions or limitation, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trademark to which section 6(2) applies or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.

(2) Where an application under sub-section (1)

(a) Has been advertised before acceptance, or

(b) After advertisement of an application an error in the application has been corrected or the application has been permitted to be amended under section 19.

The Registrar may cause the application to be advertised again or, notify in the prescribed manner the correction or amendment made in the application.

7.19 Opposition to Registration
(নিবন্ধনের বিরোধিতা)

18. Opposition to Registration (নিবন্ধনের বিরোধিতা):

(1) Any person may, within 2(two) months from the date of the advertisement of an application for registration, and on payment of the prescribed fee, give notice in writing in the prescribed manner to the Registrar, of opposition to registration.

(2) The Registrar shall, within 1(one) month from the receipt of the notice of opposition by him, serve a copy of the notice on the applicant for registration in the prescribed manner and within 2(two) months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall, within 1(one) month from the receipt of such counter-statement, serve a copy thereof in the prescribed manner on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, and considering the evidence, decide whether registration is to be permitted and whether such permission shall be or not subject to conditions or limitations.

(6) When the Registrar deems it necessary to permit registration subject to conditions or limitations under sub-section (5), he shall record his decision on such conditions or limitations.

(7) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in Bangladesh, the Registrar may require him to give security for costs of the proceedings before it, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(8) Notwithstanding anything contained in this section, all opposition relating activities for registration shall be concluded within 120 (one hundred and twenty) working days after giving notice under sub-section (1).

7.20 Correct the Mistakes
(ভুল সংশোধন)

19. Correction (সংশোধন): The Registrar may on such terms as he thinks fit, at any time, whether before or after acceptance of an application for registration under section 15 permit the correction of any error in or in connection with the application or permit correction of any error in a notice of opposition or a counter-statement under section 18.

7.21 Registration
(নিবন্ধন)

20. Registration (নিবন্ধন):

(1) Subject to the provisions of section 15 when

(a) an application for registration of a trademark in the Register has been accepted,

(b) the application has not been opposed and the time for notice opposition has expired; and

(c) the application has been opposed and the opposition has been decided in favour of the applicant; the Registrar shall register the said trademark in the Register, giving effect of the trademark from the date of the making of the application for registration, and that date shall, subject to the provisions of section 120, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trademark, the Registrar shall issue to the applicant a certificate in the prescribed from of the registration thereof, impressed with the seal of the Trademarks Registry.

(3) Subject to the compliance with the conditions by the applicant for registration, the registration certificate of the concerned application shall be provided under sub-section(2) within 150 (one hundred and fifty) working days from the date of filing the application, if there is no defects, or objection or any opposition against the application for trademark.

(4) When the registration of the trademark is not completed within 1 (one) year from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(5) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

7.22 The Joint Entity Trademarks (যৌথ স্বত্বাধীন ট্রেডমার্ক)

21. Jointly owned trademarks (যৌথ মালিকানাধীন ট্রেডমার্ক):

(1) Nothing in this Act shall Act shall authorize the registration of two or more persons who use a trademark independently, or propose so to use it, as joint proprietors thereof.

(2) Notwithstanding anything contained in sub-section (1), where there are inter relation between two or more persons interested in the use of the same trademark relating to an article or service, those persons may be registered as joint proprietors of the trademark, and the effect in relation to any rights to the use of the trademark vested in those persons shall be if those rights had been vested in a single person.

7.23 The Period of Registration, Renewal and Restoration (নিবন্ধনের মেয়াদ, নবায়ন ও পুনর্বহাল)

22. Duration, renewal and restoration of registration (সময়কাল, নবায়ন এবং নিবন্ধন পুনরুদ্ধার):

(1) The registration of a trademark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trademark in the prescribed manner and within the prescribed period, renew the registration of the trademark for a period of 10(ten) years from the date of expiration of the original registration or as the case may be, of the last renewal of registration.

(3) At the prescribed time be fore the expiration of the last registration of a trademark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trademark from the Register.

(4) Where a trademark has been removed from the Register for non-payment of the prescribed fee, the Registrar may, within 1(one) year from the expiration of the last registration of the trademarks, on receipt of an application in the prescribed from, if satisfied that it is just so to do, restore the trademark to the Register and renew the registration of the trademark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of 10(ten) years from the expiration of the last registration.

7.24 Effect of Removal from Registration for Failure to pay fee for Renewal (নবায়ন ফি পরিশোধে ব্যর্থতার কারণে নিবন্ধন বই হতে কর্তনের ফলাফল)

23. Effect of removal from registration for failure to pay fee for renewal (পুনর্বীকরণের জন্য ফি প্রদানের ব্যর্থতার নিবন্ধকরণ থেকে অপসারণের প্রভাব): Where a trademark has been removed from the Register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trademark during 1(one) year next after the date of the removal, be deemed to be a trademark already on the Register, unless the Tribunal is satisfied

(a) that there has been no bona fide trade use of the trademark which has been removed during the 2(two) years immediately preceding its removal; and

(b) that no deception or confusion would be likely to arise from the use of the trademark which is the subject of the application for registration by reason of any previous use of the trademark which has been removed.

7.25 For Unregistered Trademark Infringement Action can not be accepted (অনিবন্ধিত ট্রেডমার্ক লঙ্ঘনের জন্য কোন ব্যবস্থা গ্রহণ করা যাবে না)

24. No action for infringement of unregistered trademark (নিবন্ধনভুক্ত ট্রেডমার্ক লঙ্ঘনের জন্য কোনো পদক্ষেপ নেই):

(1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trademark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing of goods or services as the goods or services, as the case may be, of another person or the remedies in respect thereof.

7.26 Result of the Registration of Acquired Rights (নিবন্ধনের ফলে অর্জিত অধিকার)

25. Rights conferred by registration (নিবন্ধনকরণের মাধ্যমে অধিকার প্রদত্ত):

(1) Subject to the other provisions of this Act, the registration of a person in the Register as proprietor of a trademark in respect of any goods or services shall, if valid give to that person the exclusive right to the use of the trademark in relation to those goods or services, as the case may be, and to obtain relief in respect of infringement of the trademark in the manner provided by this Act.

(2) No person other than the registered owner of a trademark in relation to any goods or services, as the case may be, shall use that trademark without the consent of the registered owner.

(3) The exclusive right to the use of a trademark given under sub-section (1) shall be subject to any conditions or limitations entered on the Register.

(4) Where two or more persons are registered proprietors of trademarks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trademarks shall not except so far their respective rights are subject to any conditions or limitations entered on the Register, be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trademarks but each of those persons has otherwise the same rights as against other persons not being registered users using by way of permitted use as he would have if he were the sole registered proprietor.

7.27 Infringement of Trademarks (ট্রেডমার্ক লঙ্ঘন)

26. Infringement of trademarks (ট্রেডমার্ক লঙ্ঘন):

(1) A registered trademark is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof a trademark which is identical with, or deceptively similar to, any trademark, in relation to goods or services of his own trade.

(2) A registered trademark is infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof uses in the course of trade a mark where the mark is:

(a) identical with the trademark and is used in relation to goods or services similar to those for which the trademark is registered;

(b) the mark is similar to the trademark and is used in relation to goods or services identical with or similar to those for which the trademark is registered; or

(c) identical with the registered trademark and is used in relation to goods or services which are identical with those for which the trademark is registered; and for this reason there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trademark.

(3) A registered trademark is infringed or is deemed to be infringed by any person who, not being the registered proprietor of the trademark or a registered user thereof uses in the course of trade a mark where the mark is:

(a) identical with or similar to the trademark;

(b) used in relation to goods or services which are not similar to those for which the trademark is registered; and

(c) where the trademark has a reputation in Bangladesh and the use of the mark, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

(4) For the purposes of this section, a person uses "a registered trademark" means:
   (a) affixes it to goods or the packaging thereof;
   (b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the mark, or offers or supplies services under the mark;
   (c) imports or exports goods under the mark;
   (d) uses the mark on business papers or in advertising.

(5) A person who applies a registered trademark to material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, shall be treated as infringer of the trademark if when he applied the mark he knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a registered user or any other person having the right to use it under this Act.

(6) Nothing in the provisions of this section shall be construed as preventing the use of the registered trademark by any person for the purpose of identifying goods or services as those of the proprietor or a registered user or any other person having the right to use it under this Act, but such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trademark if the use without due cause taken unfair advantage of, or is detrimental to, the distinctive character or repute of the trademark.

(7) A well-known mark which is registered is infringed or is deemed to be infringed by a person who, not being the registered proprietor of the well-known mark or a registered user thereof using by way of permitted use,
   (a) uses the mark in relation to goods or services identical with or similar to the goods or services for which the well-known mark has been registered; or
   (b) uses such a mark in relation to goods or services which not being identical with or similar to those in respect of which the well-known mark has been registered, by using of the mark in relation to those goods or services, would indicate a connection between those goods or services and the owner of the registered well-known mark and that the interests of the owner of the registered well-known mark are likely to be damaged by such use.

Explanation. For the purposes of this section, a "well-known mark" has the same meaning as in section 10.

(8) In an action for infringement of a trademark registered in the Register an injunction or other relief shall not be granted to the plaintiff if the defendant establishes to the satisfaction of the Court that
   (a) the use of the mark of which the plaintiff complains is not likely to deceive or cause confusion; or
   (b) the use is not to be taken as indicating a connection in the course of trade between the goods or services in respect of which the trademark is registered and some person having the right, either as registered proprietor or as registered user, to the trademark.

7.28 Such Actions do not Violate Trademark
(ট্রেডমার্ক লঙ্ঘিত হয় না এরূপ কর্মকাণ্ড)

27. Acts not constituting infringement (আইন লঙ্ঘন করে না):

(1) Notwithstanding anything contained in this Act, the following acts do not constitute an infringement of the right to the use of a registered trademark

(a) where a trademark is registered subject to any conditions or limitations, the use of the trademark in any manner in relation to goods or services, as the case may be, to be sold or otherwise traded in, in any place, or in relation to goods or services to be exported to any market, or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;

(b) by being permitted to use those goods or a bulk of which they form part or services, or a bulk of which they form part by the proprietor of the trademark or any person related to the trade of goods or services in relation with the registered user or to use within the limit of permitted use of the registered proprietor or user, the use of such trademark, unless the registered proprietor or the user subsequently has removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trademark;

(c) by registration under this Act

(i) the use of a trademark is within established right by a person in relation to goods or services adapted to form part of, or to be accessory to, other goods or services;

(ii) the use of a registered trademark, being one of two or more trademarks registered under this Act which are identical or nearly resemble each other, is in exercise of the right to the use of the trademarks given by registration under this Act.

(2) Where the goods of services bearing a registered trademark are lawfully acquired by a person, the sale of or other dealings in those goods or services by that person or by a person claiming under or through him is not an infringement of the trademark by reason only of the trademark having been assigned by the registered proprietor to some other persons after the acquisition of those goods or services, as the case may be.

7.29 Face Evidence of the Validity of Registration
(নিবন্ধন বৈধতার প্রাথমিক প্রমাণ)

28. Registration to be prima facie evidence of validity (বৈধতার প্রথম প্রমাণ হিসেবে নিবন্ধন):

(1) In all legal proceedings relating to a trademark registered under this Act, including application under section 51, the original registration of the trademark and of all subsequent assignments and transmissions of the trademark shall be prima facie evidence of the validity thereof.

(2) In all legal proceedings as aforesaid a trademark registered in the Register shall not be held to be invalid on the ground that it was not a trademark to be registered under section 6 except upon evidence of distinctiveness and that such evidenec was not submitted to the Registrar before registration, if it is proved that the trademark had been so used by the registered proprietor or his predecessor-in-title as to have become distinctive at the date of registration.

7.30 After a Certain Period of Time to be Conclusive as valid Registration (নির্দিষ্ট সময়ের পর নিবন্ধন বৈধ হিসেবে চূড়ান্ত হওয়া)

29. Registration to be conclusive as to validity after a certain period (নির্দিষ্ট সময়ের পরে বৈধতা হিসেবে নিবন্ধনকরণ): Subject to the provisions of sections 32 and 42, in all legal proceedings relating to a trademark registered in the Register including application under section 51, the original registration of the trademark shall, after the expiration of 7 (seven) years from the date of such original registration, be taken to be valid in all respects unless it is proved.

(a) that such registration was obtained by fraud or in bad faith;

(b) that the trademark was registered in contravention of, or offends against, the provisions of section 8;

(c) the trademark was not, at the commencement of the proceedings, distinctive of the goods or services, of the registered proprietor.

7.31 Vested Rights of Custody (অর্পিত অধিকারের হেফাজত)

30. Saving for vested rights (অর্পিত অধিকারের জন্য সংরক্ষণ করা): Nothing in this Act shall entitle the proprietor of a registered trademark or well-known mark or a registered user to interfere with or restrain any person or his predecessor from using a trademark identical with or nearly resembling it in relation to goods or services if it has continuously been used by them from a date prior to the use of the first-mentioned trademark or well-known mark in relation to those goods or services by the proprietor or a predecessor-in-title of his, and the Registrar shall not refuse to register the second-mentioned trademark by reason only of the registration of the first-mentioned trademark.

7.32 Product and service Names, Addresses, or the Use of Custody (পণ্য বা সেবার নাম, ঠিকানা বা বর্ণনা ব্যবহারের হেফাজত)

31. Savings for use of name, address, or description of goods or services (নাম, ঠিকানা বা পণ্য বা সেবাসমূহের বিবরণ ব্যবহারের জন্য সঞ্চয়): Nothing in this Act shall entitle the proprietor or a registered user of a registered trademark or a registered well-known mark to interfere with any bona-fide use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors' business, or the use by any person of any bona-fide description of the character or quality of his goods or services.

7.33 Merchandise (article), Material (substance) or Service Name or Describe the Use of Custody
(পণ্যদ্রব্য, উপাদান বা সেবার নাম বা বর্ণনা ব্যবহারের হেফাজত)

32. Savings for words as name or description of an article or substance or services (কোনো নিবন্ধন বা পদার্থ বা সেবাসমূহের নাম বা বিবরণ হিসেবে শব্দের জন্য সঞ্চয়):

(1) The registration of a trademark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any word or words which the trademark contains or of which it consists of the name or description of an article or substance or services:

Provided that, if it is proved either

(a) that there is a well-known and established use of the said word or words as the name or description of the article or substance or service by a person or persons carrying on a trade therein, not being use in relation to goods or services connected in the course of trade with the proprietor or a registered user of the trademark or in the case of a certification trademark, goods or services certified by these proprietor; or

(b) that the article or substance or service was manufactured under a patent and that a period of two years or more has passed after the patent has elapsed, and that the said word or words are the only practicable name or description of the article or substance or service the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then,

(a) for the purposes of any proceedings under section 51

(i) if the trademark consists solely of such word or words, the registration of the trademark, so far as regards registration in respect of the article or substance or service in question or any goods or services of the same description, shall be deemed to be an entry wrongly remaining in the Register;

(ii) if the trademark contains such word or words and other matter, the Tribunal, in deciding whether the trademark shall remain on the Register, so far as regards registration in respect of the article or substance or service in question of any goods or services of the same description, may, in case of a decision in favour of its remaining on the Register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance or service and any goods or services of the same description, of such word or words:

Provided that no disclaimer shall affect any rights of the proprietor of a trade except such as arise out of the registration of the trademark in respect of which the declaimer is made:

(b) for the purposes of any other legal proceedings relating to the trademarks

(i) if the trademark consists solely of such word or words, all rights of the proprietor under this Act or any other law to the exclusive use of the trademark in relation to the article or substance or service in question or to any goods or services of the same description, or

(ii) if the trademark contains such word or words and other matters, all such rights of the proprietor to the exclusive use of such word or words, in such relation as aforesaid, shall be deemed to have ceased on the date at which the use mentioned in clause (a) of sub-section (1) first become well-known and established, or at the expiration of the period of 2(two) years mentioned in clause (b) of sub-section (1).

7.34 Proposed Use of the Trademark by the Company to be Formed (গঠনাধীন কোম্পানি কর্তৃক প্রস্তাবিত ট্রেডমার্ক ব্যবহার)

41. Use of proposed trademarks by company to be formed (সংস্থা কর্তৃক প্রস্তাবিত ট্রেডমার্ক ব্যবহার ফর্মড):

(1) No application for the registration of a trademark in respect of any goods or services shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trademark, if the Registrar is satisfied that a company is about to be formed and registered under the Companies Act, 1994 (Act XVIII of 1994) and that the applicant intends to assign the trademark to that company with a view to the use thereof in relation to those goods or services as the case may be, by the company.

(2) The Tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) If any trademark in respect of any goods or services is assigned to any company under sub-section (1) an application shall be made to the Registrar within the time specified for registration as the proprietor of the trademark in respect of those goods, or services.

(4) If any application is made under sub-section (3), the Registrar may register the company as the proprietor of the assigned trademark in respect of those goods or services and if no application is made within the time, the registration shall cease to have effect and the Registrar shall amend the register accordingly.

7.35 Do not Use the Trademark from the Register Deduction and Restrictions (ট্রেডমার্ক ব্যবহার না করার কারণে নিবন্ধন বই হতে কর্তন এবং সীমাবদ্ধতা আরোপ)

42. Removal from Register and imposition of limitations on ground of non-use (নিবন্ধন থেকে অপসারণ এবং অ-ব্যবহারের ভিত্তিতে সীমাবদ্ধতা আরোপ করা):

(1) A registered trademark may be taken off the Register in respect of any of the goods or services, in respect of which it is registered on application made in the prescribed manner by any person aggrieved to the High Court Division or the Registrar, on the ground either

(a) that the trademark was registered without any bona-fide intention on the part of the applicant for registration that it should be used in relation to those goods or services, as the case may be, by him or, in a case to which the provisions of section 41 apply, by the company concerned, and that there has in fact, been no bona-fide use of the trademark, in relation to those goods or services by any proprietor thereof for the time being up to a date one month before the date of the application; or

(b) that up to a date one month before the date of the application, a continuous period of 5 (five) years or longer elapsed during which the trademark was registered and during which there was no bona-fide use thereof in relation to those goods or services by any proprietor thereof for the time being

(2) The Tribunal shall not refuse an application submitted under sub-section (1) except where

(a) the applicant has been permitted under section 10 to register an identical or nearly resembling trademark in respect of the goods or services; or

(b) where the Tribunal is of opinion that there has been, before the relevant date or during the relevant period, bona-fide use of the trademark by any proprietor thereof for the time being in relation to goods or services.

(3) On an application by an aggrieved person in the prescribed manner to the High Court Division or the Registrar, the Tribunal may impose on the registration such limitations as it thinks proper for securing that registration shall cease to extend to such use in cases where

(a) circumstances exist in relation to goods or services, as the case may be, to be sold, or otherwise traded in, in a particular place in Bangladesh, or in relation to goods or services, as the case may be, to be exported to a particular market outside Bangladesh, that there has been no bona fide use of the trademark for 5 (five) years or more after registration by any proprietor thereof; or

(b) more than one person have been permitted under section 10 to register an identical or nearly resembling trademark in respect of identical goods or services, as the case may be, to be sold, or otherwise traded in, or to be exported.

(4) For the purpose of clause (b) of sub-section (1) or sub-section

(2), an applicant shall not be entitled to rely on any non-use of a trademark, which

(a) is shown to have been due to special circumstances; and

(b) is not to any intention to abandon the business or not to use the trademarks.

7.36 Defensive Registration as a Trademark Well-known Trademarks (সুপরিচিত ট্রেডমার্ককে প্রতিরক্ষামূলক ট্রেডমার্ক হিসেবে নিবন্ধনকরণ)

43. Defensive registration of well-known trademarks (সুপরিচিত ট্রেডমার্কগুলোর প্রতিরক্ষামূলক নিবন্ধকরণ):

(1) Where a trademark consisting of any invented word has become so well-known as respects of any goods or services in relation to which it is registered and has been used, that the use thereof in relation to other goods or services, as the case may be, would be likely to be taken as indicating a connection in the course of trade between those goods or services and a person entitled to use the trademark in relation to the first-mentioned goods or services, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods or services does not use or propose to use the trademark in relation to those other goods or services and notwithstanding anything in section 42, the trademark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods or services, as the case may be, as defensive trademark and, while so registered, shall not be liable to be taken off the Register in respect of those goods or services under the said Section.

(2) The registered proprietor of a trademark may apply for the registration thereof in respect of any goods or services as a defensive trademark notwithstanding that it is already registered in his name in respect of those goods or services, otherwise than as a defensive trademark.

(3) A trademark registered as a defensive trademark and that trademark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods or services, as the case may be, be deemed to be and shall be registered as associated trademarks.

(4) On application made in the prescribed manner by any person aggrieved to the High Court Division or to the Registrar, the registrations of a trademark as a defensive trademark may be cancelled on the ground that

(a) the requirements of sub-section (1) of this section are no longer satisfied in respect of any goods or services in relation to which the trademark is registered in the name of the same proprietor otherwise than as a defensive trademark, or

(b) as respects any goods or services, as the case may be, in relation to which it is registered as a defensive trademark, there is no longer any likelihood that the use of the trademark in relation to those goods or services would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trademark of a trademark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trademark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trademarks as defensive trademarks and of trademarks so registered as they apply in other cases.

7.37 Registered User
(নিবন্ধিত ব্যবহারকারী)

44. Registered Users (নিবন্ধীত ব্যবহারকারী):

(1) Subject to the provisions of section 45 of this Act, a person other than the registered proprietor of a trademark may be registered as the registered user thereof in respect of all or any of the goods or services in respect of which it is registered otherwise than as a defensive trademark and either with or without conditions:

Provided that the Government may, by rules in this behalf, provide that no application for registration as such shall be entertained unless the agreement between the parties complies with the conditions laid down in the rules for preventing trafficking in trademarks.

(2) The permitted use of a trademark under sub-section (1), shall be deemed to be used by the proprietor thereof.

7.38 Application for Registration as a Registered User
(নিবন্ধিত ব্যবহারকারী হিসেবে নিবন্ধনের জন্য আবেদন)

45. Application for registration as registered user, etc (নিবন্ধিত ব্যবহারকারী ইত্যাদি হিসেবে নিবন্ধনের জন্য আবেদন):

(1) Where it is proposed that a person should be registered as a registered user of a trademark, the registered proprietor and the proposed registered users shall jointly apply in writing to the registrar in the prescribed manner, and every such application shall be accompanied by

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trademark; and

(b) an affidavit made by the registered proprietor or by some person authorized to Act on his behalf, which shall include

(i) particulars of the relationship, existing or proposed, between the proprietor and the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer;

(ii) whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registrations as Registered user application may be made;

(iii) stating the goods or services in respect of which registration is proposed;

(iv) stating the conditions or restrictions, if any, proposed with respect to the characteristics of the goods or services, as the case may be, to the mode or place of permitted use, or to any other matter;

(v) stating whether the permitted use is to be for a period, or without limit of period, and, if for a period, the duration thereof; and

(c) such further documents, information or other evidence as may be required by the Registrar or as may be prescribed.

(2) Any registered user may, subject to prescribed conditions, be registered, if

(a) the requirements of sub-section (1) have been complied with, and

(b) the use of trademark in respect of goods or services by the proposed registered user would be against public interest.

(3) The Registrar may, subject to other provisions of this Act, refuse any application under this section including the said application if it appears to him that grant thereof would tend to facilitate trafficking any goods or services by the name of the said trademark.

(4) No application under this section shall be refused or conditionally accepted by the Registrar without giving the applicant an opportunity of being heard.

(5) The Registrar shall, if so requested by an applicant, take steps for securing that information give for the purposes of an application under this section (other than matters entered in the Register) is not disclosed to rivals in trade.

(6) The Registrar shall issues notice in the prescribed manner of the registration of a person as a registered user, to other registered users of the trademark, if any.

7.39 Registered User the Ability to Take Procedings Against Infrigement (ট্রেডমার্ক লঙ্ঘনের বিরুদ্ধে মামলা দায়ের করার ক্ষেত্রে নিবন্ধিত ব্যবহারকারীর ক্ষমতা)

46. Power of registered user to take proceedings against infringement (লঙ্ঘনের বিরুদ্ধে ব্যবস্থা গ্রহণের নিবন্ধিত ব্যবহারকারীর শক্তি):

(1) Subject to any agreement subsisting between the parties, a registered user of a trademark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within 3 (three) months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

7.40 Changing or Canceling the Registration of the Registered User the Ability to Registrar
(নিবন্ধিত ব্যবহারকারীর নিবন্ধন পরিবর্তন বা বাতিলকরণে নিবন্ধকের ক্ষমতা)

47. Power of registered to vary or cancel of registration as registered user (নিবন্ধিত ব্যবহারকারীর হিসেবে নিবন্ধনের ক্ষমতা পৃথক বা বাতিল করার ক্ষমতা): (1) Without prejudice to the provision of section 51 of this Act. the registration of a person as a registered user

(a) may be varied by Registrar as regards the goods or services in respect of which, or any conditions or restrictions subject to which, if has effect, on the application in writing in the prescribed manner of the registered proprietor of the trademark;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trademark;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:

(i) that the Registered user has used the trademark otherwise than by way of the permitted use, or in such a way as to cause or to be likely to cause, deception or confusion;

(ii) that the proprietor or the Registered user misrepresented, or failed to disclose, some fact material to the application for the registration, which if accurately represented or disclosed would have justified the refusal of the application for registration of the Registered user;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested;

(iv) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would have justified the refusal of an application for registration of the registered user;

(d) may be cancelled by the Registrar in respect of any goods or services, as the case may be, in relation to which the trademark is no longer Registered;

(e) may be cancelled by the Registrar of his own motion or on the application in writing in the prescribed manner of any person, on the ground that any stipulation in the agreement between the Registered proprietor and the registered user regarding the quality of the goods or services in relation to which the trademark is to be used is either no being enforced or is not being complied with.

(2) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered proprietor and each registered user (not being the applicant) of the trademark.

7.41 The Assignment or Transfer of Registered Users (নিবন্ধিত ব্যবহারকারী কর্তৃক ট্রেডমার্কের স্বত্বনিয়োগ বা হস্তান্তর)

48. Registered user not to have right of assignment or transmission (নিবন্ধিত ব্যবহারকারীর দায়িত্ব বা সঞ্চালনের অধিকার নেই): Nothing in this Act shall confer on a registered user of a trademark any assignable or transmissible right to the use thereof.

Explanation: The right of a registered user of a trade shall not be deemed to have been assigned or transmitted within the meaning of this section in the following cases, namely:

(a) Where the registered user being an individual enters into a ownership with any other person for carrying on the business concerned; but in any such case the firm may use the trademark, if otherwise in force, only for so long as the registered user is a member of the firm;

(b) Where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the trademark, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

(c) For the purposes of this section, "firm" has the same meaning as in the Partnership Act. 1932 (Act IX of 1932).

7.42 Use of One of Associated Trademarks or Trademarks Substantially Identical is Equivalent to Use of Another (সহযোগী ট্রেডমার্ক বা মৌলিকভাবে সাদৃশ্যপূর্ণ ট্রেডমার্কসমূহের কোন একটির ব্যবহার অন্য একটির ব্যবহারের সমতুল্য)

49. Use of one of associated or substantially identical trademarks equivalent to use of another (সম্পর্কিত বা যথেষ্ট পরিমাণে অভিন্ন ট্রেডমার্কগুলোর মধ্যে অন্যটির ব্যবহারের সমতুল্য ব্যবহার):

(1) Where under the provisions of this Act. the use a registered trademark is required to be proved for any purpose, the Tribunal may, if and so far as it shall think right, accept the use of a registered associated trademark, or the trademark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trademark shall for the purposes of this Act be deemed to be also a use of any trademark being a part thereof and registered in accordance with sub-section (1) of section 12 of this Act in the name of the same proprietor.

7.43 The Use of trademark for export trade and use when form of trade connection changes (রপ্তানি বাণিজ্যে সম্পর্ক পরিবর্তন হওয়ার ক্ষেত্রে ট্রেডমার্কের ব্যবহার)

50. Use of trademark for export trade and use when form of trade connection changes (রপ্তানি বাণিজ্যের জন্য ট্রেডমার্কের ব্যবহার এবং যখন বাণিজ্য সংযোগ পরিবর্তিত হয় তখন ফর্ম ব্যবহার করা):

(1) The application in Bangladesh of a trademark to goods or services to be exported from Bangladesh and any other law done in Bangladesh in relation to goods or services, to be so

exported which, if done in relation to goods or services, as the case may be, to be sold or otherwise trade in within Bangladesh would constitute use of a trademark therein, shall be deemed to constitute use of the trademark in relation to those goods or services, as the case may be, for any purpose for which such use is metrical under this Act or any other Law.

(2) The use of registered trademark in relation to goods or services between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods or services, as the case may be, between which and the person using the mark or any predecessor in his business a different form of connection in the course of trade subsisted or subsists.

7.44 Falsifying and Falsely Applying Trademarks
(ট্রেডমার্ক মিথ্যা প্রতিপন্ন এবং মিথ্যা ব্যবহার)

72. Falsifying and falsely applying trademarks (মিথ্যা বর্ণনা এবং মিথ্যা ট্রেডমার্ক প্রয়োগ করা):

(1) A person shall be deemed to falsify a trademarks who, either

(a) without the assent of the proprietor of the trademark, makes that trademark, or a deceptively similar mark; or

(b) falsifies any genuine trademark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services, as the case may be, a trademark who, without the assent of the proprietor of the trademark

(a) applies such trademark or a deceptively similar mark to goods or services, as the case may be, or any package containing goods;

(b) uses any package bearing a mark which is identical with or deceptively similar to the trademark of such proprietor, for the purpose of packing, filling, or wrapping therein any goods of the proprietor of the trademark.

(3) Any trademark falsified as mentioned in sub-section (1) of this section or falsely applied as mentioned in sub-section (2) of this section, shall be deemed to be a false trademark,

(4) In any prosecution for falsifying a trademark or falsely applying a trademark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

7.45 False Trademarks, Trade Descriptions, etc. Penalty
(মিথ্যা ট্রেডমার্ক, ট্রেড বর্ণনা, ইত্যাদি ব্যবহারের দণ্ড)

73. Penalty for applying false trademarks and false trade description, etc. (মিথ্যা ট্রেডমার্ক এবং মিথ্যা বাণিজ্যের বিবরণ ইত্যাদির প্রয়োগের দণ্ড): If a person

(a) falsifies any trademark,

(b) falsely applies for any trademark or to goods or services,

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument of the purpose of falsifying, or of being used for falsifying a trademark,

(d) applies any false trade description to goods or services,

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or producer or supplier, as the case may be, or person for whom the goods or services are manufactured, produced or supplied is required to be applied under section 108 of this Act, a false indication of such country, place, name or address,

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods or services to which it is required to be applied under section 108, or

(g) causes any of the things mentioned from clause (a) to (f) to be done. he shall, subject to the provisions of this Act be punished with imprisonment for a term which may extend 2 (two) years but not less than 6 (six) months or with fine which may extend to taka 2 (two) lac but not less than 50 (fifty) thousand or with both and for a second or subsequent conviction, with imprisonment for a term which may extend to 3 (three) years but not less than 1 (one) year, or with fine which may extend to taka 3 (three) lac but not less than 1 (one) lac, or with both.

7.46 Penalty for False Trademark or Trade Description to Goods Sale (মিথ্যা ট্রেডমার্ক বা ট্রেড বর্ণনাযুক্ত পণ্য বিক্রয় করার দণ্ড)

74. Penalty for selling goods to which a false trademark or trade description is applied (মিথ্যা ট্রেডমার্ক বা ব্যবসায়ের বিবরণ প্রয়োগ করা হয় এমন পণ্য বিক্রির দণ্ড): If a person sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacturer any goods or things to which a false trademark or a false trade description is applied or which, being required under section 108 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer or producer or the person for whom the goods are manufactured or produced are without the indication so require, he shall, unless the proves

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trademark or trade description or that any offence had been committed in respect of the goods; and

(b) that, on demand by or on behalf of the prosecutor he gave all the information in his power with respect to the person from whom he obtained such goods or things; or

(c) that otherwise he acted innocently, be punished with imprisonment of either description for a term which may extend to 2 (two) years, or with fine, or with both, and in case of a second or subsequent conviction, with imprisonment of either description for a term which may extend to 3 (three) years, or with fine, or with both.

7.47 Unregistered Trademarks Registered Trademark of the Bar Display (অনিবন্ধিত ট্রেডমার্ককে নিবন্ধিত ট্রেডমার্ক হিসেবে প্রদর্শন করার দণ্ড)

76. Penalty for falsely representing a trademark as registered (নিবন্ধিত হিসাবে ট্রেডমার্ককে মিথ্যা উপস্থাপনের দণ্ড): (1) If any person makes any representation

(a) with respect to a mark not being a registered trademark, to the effect that it is a registered trademark; or

(b) with respect to a part of a registered trademark not being a part separately registered as trademark, to the effect that it is separately registered as a trademark; or

(c) to the effect that a registered trademark is registered in respect of any goods or services in respect of which it is not in fact registered; of

(d) to the effect that the registration of a trademark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the Register, the registration does not in fact give that right; he shall be punished with imprisonment for a term which may extend to 1 (one) year but not less than 6 (six) months, or with fine which may extend to taka 1 (one) lac but not less than 50 (fifty) thousand, or with both.

(2) For the purposes of this section, the use in Bangladesh in relation to a trademark of the word "registered", or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the Register, except

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trademark under the law of a country outside Bangladesh being a country under the Act of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a) of this sub-section; or

(c) where that word is used in relation to a mark registered as a trademark under the law of a country outside Bangladesh and in relation solely to goods or services, to be exported to that country.

7.48 Asatyarupe Place of Business to be as Concerned with Trademark Office Bar (কোন ব্যবসায়ের স্থানকে অসত্যরূপে ট্রেডমার্ক অফিসের সাথে সংশ্লিষ্ট বলে বর্ণনা করার দণ্ড)

77. Penalty of improperly describing a place of business as connected with the Trademarks office (ট্রেডমার্ক অফিসের সাথে সংযুক্ত হিসেবে ব্যবসায়ের কোন স্থানকে ভুলভাবে বর্ণনা করার দণ্ড): If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Trademark Office, he shall be punished with imprisonment of either description for a term which may extend to one year but not less than 6 (six) months, or with fine which may extend to taka 1 (one) lac but not less than 50 (fifty) thousand, or with both.

7.49 Penalty for False Entries in the Register
(নিবন্ধন বইতে অসত্য এন্ট্রির জন্য দণ্ড)

78. Penalty for falsification of entries in the Register (রেজিস্টার এন্ট্রি মিথ্যা করার দণ্ড): If any person makes, or causes to be made, a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punished with imprisonment for a term which may extend to 1 (one) year but not less than 6 (six) months, or with fine, which may extend to taka 1 (one) lac but not less than 50 (fifty) thousand taka, or with both.

7.50 Offences Committed by the Company
(কোম্পানি কর্তৃক অপরাধ সংঘটন)

82. Offences by companies (সংস্থাগুলো দ্বারা অপরাধ): (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding any things contained in sub-section (1) if the person conducting the business of the company proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, no measurers shall be taken against him.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individual; and

(b) "director" in relation to a firm, means a partner of the firm.

EXERCISE

1. Describe the provisions relating to trademark registration application.
2. Discuss the provisions relating to trademark registration.
3. Describe the provisions relating to the period of registration, renewal and restoration of trademark.
4. Explain the provisions relating to the result of the registration of acquired rights of trademark.
5. Discuss the provisions relating to unregistered trademarks registered trademark of the bar display.
6. Describe the provisions relating to trademark infringement.
7. Discuss the provisions relating to not use the trademark from the register deduction and restrictions.
8. Discuss the provisions relating to application for trademark registration as a registered user.
9. Define of Trademark.
10. What is Trademark?
11. Discuss the Historical Background.
12. Describe the Trademark Protection by Registration.
13. Explain the Conditions of Trademark Registration.
14. Discuss the Procedure for Registration.
15. Discuss the Rights conferred by Registration.
16. Describe the Infringement.
17. Explain the Assignment and Transmission.
18. Discuss the Offences and Penalty.
19. Describe the Passing Off and Protection of Unregistered Trademark.
20. Explain the Remedies for Infringement.
21. Discuss the Application for Registration.
22. Explain the Reject the Application.

23. Explain the Application Acceptance Notice (Advertisement) Issued.
24. What are the Opposition to Registration.
25. Discuss the Correct the Mistakes.
26. What are the Registration.
27. Discuss the Joint Entity Trademarks.
28. Discuss the Period of Registration, Renewal and Restoration.
29. Explain the Effect of Removal from Registration for Failure to pay fee for Renewal.
30. Discuss the For Unregistered Trademark Infringement Action can not be accepted.
31. Describe the Result of the Registration of Acquired Rights.
32. Briefly discuss the Infringement of Trademarks.
33. Explain the Such Actions do not Violate Trademark.
34. What are the Face Evidence of the Validity of Registration.
35. Discuss the After a Certain Period of Time to be Conclusive as valid Registration.
36. Describe the Vested Rights of Custody.
37. Discuss the Product and service Names, Addresses, or the Use of Custody.
38. Explain the Merchandise (article), Material (substance) or Service Name or Describe the Use of Custody.
39. Briefly discuss the Proposed Use of the Trademark by the Company to be Formed.
40. Discuss the False Trademarks, Trade Descriptions, etc. Penalty.
41. Explain the Penalty for False Trademark or Trade Description to Goods Sale.
42. Describe the Unregistered Trademarks Registered Trademark of the Bar Display.
43. Discuss the Asatyarupe Place of Business to be as Concerned with Trademark Office Bar.
44. What are the Penalty for False Entries in the Register?
45. Discuss the Offences Committed by the Company.

CHAPTER-08

The Bangladesh Environment Conservation Act, 1995

Syllabus: **The Bangladesh Environment Conservation Act, 1995:** Restrictions on manufacture, sale etc. of article s injurious to environment-Remedial measures for injury to ecosystem-Environmental Clearance Certificate.

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8.1 The Bangladesh Environment Conservation Act, 1995
(বাংলাদেশ পরিবেশ সংরক্ষণ আইন-১৯৯৫)

Act No. 1 of 1995

[Bangla text of the Act was published in the Bangladesh Gazette, extra-ordinary issue of 16-2-1995 and amended by Act Nos 12 of 2000 and 9 of 2002.]

An Act to provide for conservation of the environment, improvement of environmental standards and control and mitigation of environmental pollution.

Whereas it is necessary and expedient to provide for conservation of the environment, improvement of the environmental standards, and control and mitigation of environmental pollution;

It is hereby enacted as follows:

8.2 Some Important Definition as Described in the Law
(আইনে বর্ণিত কতিপয় গুরুত্বপূর্ণ সংজ্ঞা)

2. **Definitions.-** In this Act, unless there is anything contrary in the subject or context-

"conservation of environment" means improvement of the qualitative and quantitative characteristics of different components of environment as well as prevention of degradation of those components; *[Ref: Clause (f).]*

"Department" means the Department of Environment established under section 3 of this Act; *[Ref: Clause (a).]*

"Director General" means Director General of the Department; *[Ref: Clause (m).]*

"ecosystem" means the inter-dependent and balanced complex association of all components of the environment which can support and influence the conservation and growth of all living organisms; *[Ref: Clause (g).]*

"environment" means the inter-relationship existing between water, air, soil and physical property and their relationship with human beings, other animals, plants and micro-organisms; *[Ref: Clause (d).]*

"environment pollutant" means any solid, liquid or gaseous substance which causes harmful effect to the environment and also includes heat, sound and radiation; *[Ref: Clause (e).]*

"hazardous substance" means a substance, the chemical or biochemical properties of which are such that its manufacture, storage, discharge or unregulated transportation can be harmful to the environment; *[Ref: Clause (j).]*

"occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises, and in relation to a product, means the person in possession of the product; *[Ref: Clause (c).]*

"person" means a person or group of persons, and includes any company, association or corporation, whether incorporated or not; *[Ref: Clause (h).]*

"pollution" means the contamination or alteration of the physical, chemical or biological properties of air, water or soil, including change in their temperature, taste, odor, density, or any other characteristics, or such other activity which, by way of discharging any liquid, gaseous, solid, radioactive or other substances into air, water or soil or any component of the environment, destroys or causes injury or harm to public health or to domestic, commercial, industrial, agricultural, recreational or other useful activity, or which by such discharge destroys or causes injury or harm to air, water, soil, livestock, wild animal, bird, fish, plant or other forms of life; *[Ref: Clause (b).]*

"rule" means rule made under this Act; *[Ref: Clause (k).]*

"use", in relation to any material, means manufacturing, processing, treatment, package, storage, transportation, collection, destruction, conversion, offering for sale, transfer or similar activity relating to such material; *[Ref: Clause (i).]*

"waste" means any solid, liquid, gaseous, radioactive substance, the discharge, disposal and dumping of which may cause harmful change to the environment; *[Ref: Clause (l).]*

2A. Overriding effect of the Act. (আইনটির অন্যান্য প্রভাব): Notwithstanding anything contained to the contrary in any other law for the time being in force, the provisions of this Act, rules and directions issued under this Act shall have effect.

8.3 Department of Environment (পরিবেশ অধিদপ্তর)

3. Department of Environment (পরিবেশ অধিদপ্তর):

(1) The Government shall, for carrying out the purposes of this Act, establish a Department to be called the Department of Environment and headed by a Director General.

(2) The Director General shall be appointed by the Government and the terms and conditions of his service shall also be determined by the Government.

(3) For proper performance of the functions of the Department, necessary officers and employees shall be appointed in the manner and on the terms and conditions prescribed by rules.

8.4 Power and functions of the Director General (মহাপরিচালকের ক্ষমতা এবং কার্যাদি)

4. Power and functions of the Director General (মহাপরিচালকের ক্ষমতা এবং কার্যাদি):

(1) Subject to the provisions of this Act, the Director General may take such measures as he considers necessary and expedient for the conservation of the environment, and improvement of environmental standards, and for the control and mitigation of environmental pollution, and he may issue necessary directions in writing to any person for the discharge of his duties under this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include all or any of the following :

(a) Co-ordination with the activities of any authority or agency having relevance to the objectives of this Act;

(b) Prevention of probable accidents which may cause environmental degradation and pollution, undertaking safety measures and determination of remedial measures for such accidents and issuance of directions relating thereto;

(c) Giving advice or, as the case may be, issuing directions to the concerned person regarding the environmentally sound use, storage, transportation, import and export of a hazardous substance or its components.

(d) Conducting inquiries and undertaking research on conservation, improvement and pollution of the environment and rendering assistance to any other authority or organization regarding those matters;

(e) Searching any place, examining any equipment, manufacturing or other processes, ingredients, or substance for the purpose of improvement of the environment, and control and mitigation of pollution; and issuance of direction or order to the appropriate authority or person for the prevention, control and mitigation of environmental pollution;

(f) Collection and publication of information about environmental pollution;

(g) Advising the Government to avoid such manufacturing processes, commodities and substances as are likely to cause environmental pollution;

(h) Carrying out programs for observation of the quality of drinking water and preparation of reports thereon, and rendering advice or, as the case may be, issuing direction to the concerned persons to follow standards for drinking water.

(3) A direction issued under this section may include matters relating to closure, prohibition or regulation of any industry; undertakings or processes, and the concerned person shall be bound to comply with such direction:

[Provided that:

(a) The Director General shall, before issuing a direction of closure or prohibition of an industry, undertaking or process, send to the owner or occupier thereof a written notice so that he gets reasonable opportunity to make that industry, undertaking or process environmentally sound; and

(b) Where the Director General considers it appropriate, he may also specify in the notice that actions under sub-section (2) of section 4A may be taken if, pursuant to the notice, measures are not taken to make the relevant activities environmentally sound:

Provided further that, if the Director General considers that, due to a particular enyironmental pollution, the public life is likely to be in danger and that urgent action is necessary, he may immediately issue necessary directions.

(4) A time limit may be specified by the Director General for carrying out a direction issued under this section.

4A. Assistance from law enforcing agencies and other authorities (আইন প্রয়োগকারী সংস্থা এবং অন্যান্য কর্তৃপক্ষের সহায়তা):

(1) The Director General or a person authorized by him may, for the purpose of exercising any power or performing any function under this Act, request any law enforcing agency, or any other Government or statutory authority to render necessary assistance, and upon such request that agency or authority shall render the assistance.

(2) Where the Director General issues a direction for closure, prohibition or regulation of an industry, undertaking or process under section 4(3) and the owner or occupier thereof does not comply with the direction, the Director General may direct the provider of electricity, gas, telephone or water or all such services or any other service provided to the industry, undertaking or process to disconnect the service.

(3) Where a direction is issued under sub-section (2), the concerned person or institution shall be bound to take necessary action as specified in the direction.

8.5 Declaration of Ecologically Critical Area (পরিবেশগত দিক থেকে সমালোচনামূলক অঞ্চল ঘোষণা)

5. Declaration of ecologically critical area (পরিবেশগত দিক থেকে সমালোচনামূলক অঞ্চল ঘোষণা):

(1) If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the Government may, by notification in the official Gazette, declare such area as an ecologically critical area.

(2) The Government shall, in the notification published under subsection (1) or in a separate notification, specify the activities or processes that cannot be initiated or continued in an ecologically critical area.

8.6 Restrictions regarding vehicles emitting smoke injurious to environment (পরিবেশের জন্য ক্ষতিকারক ধোঁয়া নির্গমনকারী যানবাহন সংক্রান্ত বিধিনিষেধ)

6. Restrictions regarding vehicles emitting smoke injurious to environment (পরিবেশের জন্য ক্ষতিকারক ধোঁয়া নির্গমনকারী যানবাহন সংক্রান্ত বিধিনিষেধ):

(1) A vehicle emitting smoke or gas injurious to health or environment shall not be operated nor shall such vehicles be switched on except for the purpose of test-operation for stopping the emission of such smoke or gas.

Explanation: In this section "smoke or gas injurious to health or environment" means any smoke or gas which exceeds the standards fixed by rules.

(2) For the purposes of sub-section (1), the Director General or any person authorized by him may test any vehicle at any place or may stop a vehicle in motion for testing, and instantly test it or detain it for necessary period or may, if any vehicle violates that sub-section, seize it and other related documents, or may give necessary direction for testing the vehicle.

(3) A report of the test under sub-section (2) shall be admissible as evidence in the proceedings of a court.

(4) For the violation of sub-section (1) or a direction given under subsection (2), the driver or, as the case may be, the owner or both shall be liable.

6A. Restrictions on manufacture, sale etc. of articles injurious to environment (পরিবেশের জন্য ক্ষতিকারক নিবন্ধগুলোর উৎপাদন, বিক্রয় ইত্যাদির উপর বিধিনিষেধ): If, on the advice of the Director General or otherwise, the Government is satisfied that all kinds or any kind of polythene shopping bag, or any other article made of polyethylene or polypropylene, or any other article is injurious to the environment, the Government may, by notification in the official Gazette, issue a direction imposing absolute ban on the manufacture, import, marketing, sale, demonstration for sale, stock, distribution, commercial carriage or commercial use, or allow the operation or management of such activities under conditions specified in the notification, and every person shall be bound to comply with such direction :

Provided that such direction shall not be applicable to the following cases:

(a) if the article specified in the notification is exported or used for export;

(b) if the direction mentions that it is not applicable to any particular kind of polythene shopping bag.

Explanation: In this section "polythene shopping bag" means a bag, *thonga* or other container which is made of polyethylene or poly propylene or any compound or mixture thereof and is used for purchasing, selling, keeping or carrying another article.

8.7 Remedial Measures for Injury to Ecosystem (বস্তুতন্ত্রের চোটের প্রতিকার)

7. Remedial measures for injury to ecosystem (বস্তুতন্ত্রের চোটের প্রতিকার):

(1) If it appears to the Director General that any act or omission of a person is causing or has caused, directly or indirectly, injury to the ecosystem or to a person or group of persons, the Director General may determine the compensation and direct the firstly mentioned person to pay it and in an appropriate case also direct him to take corrective measures, or may direct the person to take both the measures; and that person shall be bound to comply with the direction.

(2) If a person, to whom a direction under sub-section (1) has been issued, fails to comply with the direction, the Director General may file a suit for compensation in the competent court or file a criminal case for failure to comply with the direction or file both kinds of cases.

(3) For the purposes of determination of compensation or corrective measures under sub-section (1), the Director General may engage any specialist and other persons.

(4) The Government may direct the Director General to take any action under this section and to submit a report thereon.

বাংলাদেশ পরিবেশ আইন, ১৯৯৫ (সংশোধিত)

8.8 Information to the Director General regarding environmental degradation or pollution
(পরিবেশের অবক্ষয় বা দূষণ সম্পর্কিত মহাপরিচালককে তথ্য)

8. Information to the Director General regarding environmental degradation or pollution (পরিবেশের অবক্ষয় বা দূষণ সম্পর্কিত মহাপরিচালককে তথ্য):

(1) Any person affected or likely to be affected as a result of pollution or degradation of the environment may, in the manner prescribed by rules, apply to the Director General for remedy of the damage or apprehended damage.

(2) The Director General may hold a public hearing and take other measures for disposing of an application made under this section.

8.9 Discharge of Excessive Environmental Pollutant etc.
(অতিরিক্ত পরিবেশ দূষণকারী ইত্যাদির নির্গমন)

9. Discharge of excessive environmental pollutant etc. (অতিরিক্ত পরিবেশ দূষণকারী ইত্যাদির নির্গমন):

(1) Where, due to an accident or other unforeseen incident, the discharge of any environmental pollutant occurs or is likely to occur in excess of the limit prescribed by the rules, the person responsible and the person in charge of the place of occurrence shall take measures to control or mitigate the environmental pollution.

(2) The persons referred to in sub-section (1) shall immediately inform the Director General of the occurrence or the likelihood of such occurrence as mentioned in that sub-section.

(3) On receipt of information under this section with respect to the accident or other incident, the Director General shall take necessary remedial measures to control or mitigate the environmental pollution, and the said person shall be bound to render assistance and co-operation as required by the Director General.

(4) The expenses incurred with respect to remedial measures to control and mitigate the environmental pollution under this section shall be payable to the Director General and may be realized from the persons referred to in sub-section (1) as public demand.

8.10 Power of entry etc.
(প্রবেশের ক্ষমতা ইত্যাদি)

10. Power of entry etc. (প্রবেশের ক্ষমতা ইত্যাদি):

(1) Subject to the provisions of this section, any person generally or specially authorized in this behalf by the Director General shall have the right to enter any building or other place at all reasonable times, with such assistance as he considers necessary for the following purposes, namely:

(a) To perform his duties under this Act or rules;

(b) To inspect any activity carried out at such place or building under this Act or rules or a notice, order or direction issued thereunder;

(c) To test or verify any equipment, industrial plant, record, register, document or any other significant material;

(d) To conduct a search of a building or place if such person has reason to believe that an offence has been committed in that building or place in contravention of this Act or rule or any notice, order or direction issued there under;

(e) To seize any equipment, industrial plant, record, register, document or other material that may be used as evidence of the commission of any offence punishable under this Act or rules.

(2) The person operating any industry, activity or process or the person handling any hazardous substance shall be bound to render all assistance to the said authorised person in discharging his duties under this Act.

(3) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall be followed in conducting any search and seizure under this section.

8.11 Power to collect samples etc.
(নমুনা সংগ্রহ করার ক্ষমতা ইত্যাদি)

11. Power to collect samples etc. (নমুনা সংগ্রহ করার ক্ষমতা ইত্যাদি):

(1) A person authorised in this behalf by the Director General may, in the manner prescribed by rules, collect from any factory, premises or other place any sample of air, water, soil or other substance for analysis.

(2) Subject to the provisions of sub-section (3) or (4), as the case may be, the report of a sample collector or the report of a laboratory or both the reports shall, in relation to a sample collected under this section, be admissible as evidence in the concerned proceedings.

(3) Subject to the provisions of sub-section (4), the person collecting the sample under sub-section (1) shall:

(a) Serve, in the manner prescribed by rules, a notice to the occupier of the place or his agent specifying his intention to collect any sample;

(b) Collect samples in presence of that occupier or his agent;

(c) Place the sample in a container and seal the container after recording signatures of himself and of the occupier or his agent on the container;

(d) Prepare a report on the collection of the sample and record signatures of himself and of the occupier or his agent;

(e) Without delay send the container to the laboratory specified by the Director General.

(4) Where, after issuing a notice under clause (a) of sub-section (3), the sample collector collects the sample under sub-section (1), but the occupier or his agent remains absent at the time of collecting sample or being present refuses to put signature on the container of the sample and report, then the collector shall, in the presence of two witnesses, secure the container by putting his own signature and seal the sample, and without delay send the samples to the laboratory [2]specified by the Director General for analysis and shall state the fact of willful absence of the occupier or his agent or, as the case may be, of his refusal.

12. Environmental Clearance Certificate (পরিবেশগত ছাড়পত্র সার্টিফিকেট): No industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General.

13. Formulation of environmental guidelines (পরিবেশগত নির্দেশিকা প্রণয়ন): The Government may, by notification in the official Gazette from time to time, formulate and publish environmental guidelines relating to the control and mitigation of environmental pollution, conservation and improvement of the environment.

8.12 Appeal (আবেদন)

14. Appeal (আবেদন):

(1) Any person aggrieved by a notice, order or direction issued under this Act or rules may, within 30 days from the date of issuance of the notice, order or direction, appeal to the [3]Appellate Authority constituted by the Government and the decision of such Authority on the appeal shall be final and shall not be called in question in any court :

Provided that the Appellate Authority may, if it is satisfied that for some unavoidable reason the aggrieved person could not file the appeal within that time, extend the period for filing the appeal by a period not exceeding thirty days.

(2) The Appellate Authority constituted under sub-section (1) may consist of one or more members:

Provided that where the Appellate Authority consists of more than one member, the Government shall appoint one of the members to be the Chairman of the Authority.

(3) An appeal filed under this section shall be disposed of within 3 months from the date of its filing.

15. Penalties (জরিমানা): (1) For violation of a provision or for non-compliance of a direction, or for the activities specified in the following Table, the penalty mentioned against them may be imposed :

15A. Confiscation of materials and equipments involved in offence (অপরাধে জড়িত উপকরণ এবং সরঞ্জাম বাজেয়াপ্ত করা): Where a person is found guilty and sentenced under section 15, all equipments or parts thereof, transport, substance or any other thing used in the commission of the offence may be confiscated under order of the court.

15A. Claim for compensation (ক্ষতিপূরণ দাবি): Where a person or a group of persons or the public suffers loss due to violation of a provision of this Act or the rules made thereunder or a direction issued under section7, the Director General may file a suit for compensation on behalf of that person, group or the public.]

8.13 Offences Committed by Companies (সংস্থাগুলো দ্বারা সংঘটিত অপরাধ)

16. Offences committed by companies (সংস্থাগুলো দ্বারা সংঘটিত অপরাধ):

(1) Where a company violates any provision of this Act or fails to perform its duties in accordance with a notice issued under this Act or the rules or fails to comply with an order or direction, then the owner, director, manager, secretary or any other officer or agent of the company, shall be deemed to have violated such provision or have failed to perform the duties in accordance with the notice or failed to comply with the order or direction, unless he proves that the violation or failure was beyond his knowledge or that he exercised due diligence to prevent such violation or failure.

Explanation: For the purposes of this section -

(a) "company" means any statutory public authority, registered company, partnership firm, and association or organisation,

(b) Director, in relation to a commercial establishment, also includes any partner or member of the board of directors.

(2) Where a company mentioned in sub-section (1) is a body corporate, such company, apart from any person charged and convicted under that sub-section, may also be charged and convicted under that sub-section in the same proceedings, but the penalty of fine only may be imposed on such company in a criminal proceedings.

8.14 Cognizance of Offence and Claim for Compensation (অপরাধের স্বীকৃতি এবং ক্ষতিপূরণ দাবি)

17. Cognizance of offence and claim for compensation (অপরাধের স্বীকৃতি এবং ক্ষতিপূরণ দাবি): No court shall take cognizance of an offence or receive any suit for compensation under this Act except on the written report of an Inspector of the Department or any other person authorized by the Director General :

Provided that if the competent court is satisfied that a person presented a written request to the said Inspector or authorized person to accept a complaint about an offence or a claim for compensation and no action was taken within 60 (sixty) days after such request, and that the complain or claim deserves to be taken into cognizance for the purpose of trial, then the court may, after giving the Inspector or the authorized person or the Director General a reasonable opportunity of being heard, directly receive the complaint or claim for compensation without such written report, or may, if it considers appropriate, direct the said Inspector or the authorized person to investigate the offence or claim.

18. Action taken in good faith (সৎ বিশ্বাসের সাথে পদক্ষেপ নেওয়া): No civil or criminal case or other legal proceeding may be instituted against the Government, Director General, or any other person of the Department for any action which caused or is likely to cause injury to any person, if such action is taken in good faith under this Act or rules.

19. Delegation of Power (ক্ষমতা প্রতিনিধি):

(1) The Government may delegate to the Director General or any other officer any of its powers under this Act or rules.

(2) The Director General may ıdelegate to any other officer of the Department any of his powers under this Act or rules.

8.15 Power to Make Rules (বিধি তৈরির ক্ষমতা)

20. Power to make rules (বিধি তৈরির ক্ষমতা):

(1) The Government may, by notification in the official ₂Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

(a) Determination of the standards of air, water, sound, soil and other components of the environment in relation to different areas for different purposes :

Provided that the Government may, by notification in the official Gazette, for a specified period suspend the application of such standard, generally or individually, in respect of industries or projects existing at the time of commencement of this Act;

(b) Regulation of the establishment of industries and other development activities for conservation of environment;

(c) Determination of safe procedures for the use, storage and transportation of hazardous substances;

(d) Determination of safety and remedial measures for prevention of accidents which may cause pollution of the environment;

(e) Determination of the standards for effluent and discharge;

(f) Procedures for assessment of the environmental impact of various projects and activities, and procedures for their review and approval;

(g) Procedures for protection of the environment and ecosystem;

(h) Determination of fees for obtaining environmental clearance certificates and other services.

8.16 Repeal and Saving
(বাতিল এবং সংরক্ষণ)

21. Repeal and saving (বাতিল এবং সংরক্ষণ):

(1) The Environment Pollution Control Ordinance, 1977 (Act XIII of 1977) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the repealed Ordinance shall be deemed to have been done under the provisions of this Act.

(3) The Department of Environment existing before the commencement of this Act shall be deemed to have been established under section 3, and the Director General and other officers and employees of that Department shall be deemed to have been appointed under this Act.

EXERCISE

1. Discuss the Department of Environment
2. Explain the Power and functions of the Director General.
3. Describe the Declaration of Ecologically Critical Area.
5. Briefly discuss the Restrictions regarding vehicles emitting smoke injurious to environment.
6. Discuss the Remedial Measures for Injury to Ecosystem.
7. Explain the Information to the Director General regarding environmental degradation or pollution.
8. Describe the Discharge of Excessive Environmental Pollutant etc.
9. Write down Power of entry etc.
10. Discuss the Power to collect samples etc.
11. What is Appeal?
12. Discuss the Offences Committed by Companies.
13. Explain the Cognizance of Offence and Claim for Compensation.
14. Describe the Power to Make Rules.
15. Explain the Repeal and Saving.

The Arbitration Act, 2001

[illegible]

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The Arbitration Act, 2001

[illegible]

[illegible] No. [illegible] of 2001]

[illegible] January, [illegible]

An Act to codify the law relating to international commercial arbitration, recognition and enforcement of foreign arbitral awards and other arbitrations.

Whereas it is expedient and necessary to amend the law relating to international commercial arbitration, recognition and enforcement of foreign arbitral awards and other arbitrations;

It is hereby enacted as follows:

9.2 Some Important Definition as Described in the Law
(আইনে বর্ণিত কতিপয় গুরুত্বপূর্ণ সংজ্ঞা)

2. Definitions (সংজ্ঞা): In this Act, unless there is anything repugnant in the subject or context, -

(a) "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(b) "Court" means District Judge's Court and includes Additional Judge's Court appointed by the Government for discharging the functions of District Judge's Court under this Act through Gazette notification;

(c) "International Commercial Arbitration" means an Arbitration relating to disputes arising out of legal 'relationships, whether contractual or not, considered as commercial under the law in force in Bangladesh and where at least one of the parties is —

(i) "an individual who is a national of or habitually resident in, any country other than Bangladesh; or

(ii) a body corporate which is incorporated in any country other than Bangladesh; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than Bangladesh, or

(iv) the Government of a foreign country;

(d) "Limitation Act" means Limitation Act, 1908 (IX of 1908);

(e) "Code of Civil Procedure" means Code of Civil Procedure, 1 908(Act V of 1908);

(f) "Specified state" means a spec state declared by the Government under section 47 of this Act;

(g) "party" means a party to an ' agreement;

(h) "Chief Justice" means the Chief Justice of Bangladesh;

(i) "Rules" means any rules made under this Act;

(j) "Person" means a statutory or other organizations, company and association and includes partnership firm;

(k) "Foreign arbitral award" means an award which is made in pursuance of an Arbitration agreement in the territory of any state other than Bangladesh but it does not include an award made in the territory of a specified state;

(1) "Evidence Act" means Evidence Act, 1872 (Act I of 1872);

(m) "Arbitration" means any arbitration whether or not administered by permanent institution;

(n) "Arbitration agreement" means an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(o) "Arbitration tribunal" means a sole Arbitrator or a panel of Arbitrator.

(p) **"Arbitral award"** means a decision made by the arbitral tribunal on the issue in dispute;

(q) **"High Court Division"** means High Court Division of the Supreme Court of Bangladesh.

3. Scope (সুযোগ):

(1) This Act shall apply where the place of Arbitration is in Bangladesh.

(2) Notwithstanding anything contained in sub-section (1) of this section, the provisions of sections 45, 46, and 47 shall also apply to the arbitration f the place of that arbitration is outside Bangladesh.

(3) This Act shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) Where any arbitration agreement is entered into before or after the commencement of this Act, the provisions thereof shall apply to the arbitration proceedings in Bangladesh relating to the dispute arising out of that agreement.

4. Construction of References ([illegible]):

(1) Where this Act, except section 36, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person to determine that Issue.

(2) Where this Act –

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

(3) Where this Act other than clause (a) of sub-section (3) of section 35 or clause (a) of sub-section (2) of section 41, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

5. Receipt of written communications ([illegible]):

(1) Unless otherwise agreed by the parties-

(a) Any written communication, notice or summons is deemed to have been received of it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received f it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication, notice or summons, as the case may be, shall be deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communication, notice or summons, as the case may be, in respect of proceedings of any judicial authority.

6. Waiver of right to object (আপত্তি অধিকার থেকে ছাড়): A party who knows that-

(a) Any provision of this Act from which the parties may derogate, or.

(b) Any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non compliance without undue delay or, f a time limit is provided therefor within such period of time, shall be deemed to have waived his right to so object.

7. Jurisdiction of Court in respect of matters covered by arbitration agreement (সালিশ চুক্তি দ্বারা আচ্ছাদিত বিষয়গুলো আদালতে এখতিয়ার):

Notwithstanding anything contained in any other law for the time being in force, where any of the parties to the arbitration agreement files a legal proceedings in a Court against the other party, no judicial authority shall hear any legal proceedings except in so far as provided by this Act.

7A. Powers of court and High Court Division to make interim orders (অন্তবর্তীকালীন আদেশ দেওয়ার জন্য আদালত এবং হাইকোর্ট বিভাগের ক্ষমতাপ্রাপ্তরা):

(1) Notwithstanding anything contained in section 7 unless the parties agree otherwise, upon prayer of either parties, before or during continuance of the proceedings or until enforcement of the award under section 44 or 45 in the case of international commercial arbitration the High Court Division and in the case of other arbitrations the court may pass order in the following matters:

(a) To appoint guardian for minor or insane to conduct on his/her behalf arbitral proceedings.

(b) To take into interim custody of or sale of or other protective measures in respect of goods or property included in the arbitration agreement.

(c) To restrain any party to transfer certain property or pass injunction on transfer of such property which is intended to create impediment on the way of enforcement of award.

(d) To empower any person to seize, preserve, inspect, to take photograph, collect specimen, examine, to take evidence of any goods or property included in arbitration agreement and for that purpose to enter into the land or building in possession of any party.

(e) To issue ad interim injunction;

(f) To appoint receiver; and

(g) To take any other interim protective measures which may appear reasonable or appropriate to the court or the High Court Division.

(2) The similar powers of the court or the High Court Division as are available in relation to any other legal proceedings shall be available to the court or the High Court Division as the case may be, while passing orders under sub section (1).

(3) Before passing order upon application received under sub-section (1) the court or the High Court Division shall serve notice upon the other party:

Provided that f the court or the High Court Division is satisfied that in the event the order is not passed instantaneously, the purpose of making interim measures shall be frustrated, there shall be no necessity of serving such notice.

(4) If the court or the High Court Division is satisfied that Arbitration Tribunal has no power to initiate proceedings in any matter under sub-section (1) or the Arbitration Tribunal has failed to pass order in such matter, the Court or the High Court Division as the case may be, shall be competent to pass order under this section.

(5) The Court or the High Court Division f considers appropriate shall be competent to cancel, alter or amend the order passed under this section.

(6) Where any Arbitration Tribunal or any institution or person empowered in any matters relating to orders passed under sub-section (1) passed any order in such matters, the order passed by the court or High Court Division as the case may be, in the same matter, shall be entirely or the relevant part thereof inoperative.

8. **Administrative assistance:** In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitration tribunal with the consent of the parties, may arrange for administrative assistance by a suitable person.

9.3 Arbitration Agreement (সালিসী চুক্তি)

9. Form of arbitration agreement (সালিশ চুক্তির ফর্ম):

(1) An arbitration agreement may be in the form of art arbitration clause in a contract or in the form of a separate agreement.

(2) An arbitration agreement shall be in writing and an arbitration agreement shall be deemed to be in writing f it is contained in –

(a) A document signed by the parties;

(b) An exchange of letters, telex, telegrams, Fax, e-mail or other means of telecommunication which provide a record of the agreement; or

(c) An exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

Explanation: The reference in a contract is a document containing an arbitration clause constitutes an arbitration agreement f the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

10. Arbitrability of the dispute (বিতর্ক সালিশি):

(1) Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may, at any time before filing a written statement, apply to the Court before which the proceedings are pending to refer the matter to arbitration,

(2) Thereupon, the Court shall, f it is satisfied that an arbitration agreement exists, refer the parties to arbitration and stay the proceedings, unless the Court finds that the arbitration agreement is void, inoperative or is incapable of determination by arbitration.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9.4 Composition of Arbitral Tribunal
(সালিশী ট্রাইব্যুনালের গঠন)

11. Number of arbitrators (সালিশ সংখ্যা):

(1) Arbitrators.

(2) Failing the determination of a number referred to in sub-section (1) the tribunal shall consist of three arbitrators.

(3) Unless otherwise agreed by the parties, where they appoint an even number of arbitrators, the appointed arbitrators shall jointly appoint an additional arbitrator who shall act as a chairman of the tribunal.

12. Appointment of arbitrators (সালিশকারী নিয়োগ):

(1) Subject to the provisions of this Act, the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(2) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(3) Failing any agreement referred to in sub-section (1).

(a) In an arbitration with a sole arbitrator, if the parties fail to agree on the arbitration within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made upon request of a party-

(i) By the District Judge in case of arbitration other than international commercial arbitration, and

(ii) In case of international commercial arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall be Chairman of the arbitral tribunal

(4) If the appointment procedure in sub-section (3) applies and

(a) A party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party or,

(b) The appointed arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon the application of a party:

(c) By the District Judge except in case of international commercial arbitration, and

(d) By the Chief Justice or by any other Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration.

(5) The third arbitrator appointed under clause (b) of sub- section (4) shall be the Chairman of the said tribunal.

(6) If more than one arbitrator are appointed under sub-section (4) the District Judge, or the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice, as the case may be, shall appoint one person from among the said arbitrators to be the Chairman of the arbitral tribunal.

(7) Where, under an appointment procedure agreed upon by the parties -

(a) A party fails to act as required under such procedure; or

(b) The parties, or the arbitrators, fail to reach an agreement under the same procedure; or

(c) A person or any third party fails to perform any function assigned to him under that procedure, unless the agreement on the appointment procedure provides other means to take the necessary measure for securing the appointment a party may apply to-

(d) The District Judge except in case of international commercial arbitration and the District Judge shall appoint the Chairman of the tribunal along with the other arbitrators,

(e) The Chief Justice or any Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration and the Chief Justice or the Judge of the Supreme Court as designated by the Chief Justice shall appoint the Chairman of the tribunal along with other arbitrators.

(8) The appointment of the arbitrator or arbitrators under sub-sections (3), (4) and (7) shall be made within sixty days from the receipt of the application thereof.

(9) The Chief Justice, or a Judge of the Supreme Court as designated by the Chief Justice, or the District Judge, as the case may be, in appointing an arbitrator under this section, shall have due regard to any qual required to the arbitrator under the agreement between the parties, and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(10) In the case of appointment of a sole arbitrator or third arbitrator in an international commercial arbitration, the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice, as the case may be, may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(11) The Chief Justice or the District Judge, as the case may be, may make such scheme as he may deem appropriate for dealing with matters under this section.

(12) The decision under sub-sections (3), (4) and (7) of the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice or the District Judge, as the case may be, shall be final.

(13) The Chief Justice may entrust a Judge with the duties for a particular case or cases or for discharging the entire duties and may fix up the tenure of that Judge for the purposes of this section.

Explanation: In this section "District Judge" means that District Judge within whose local jurisdiction the concerned arbitration agreement has been entered into.

13. Grounds for challenge (চ্যালেঞ্জের জন্য ভিত্তি):

(1) When a person is requested to accept appointment as an arbitrator, he shall first disclose any circumstances likely to give rise to justifiable d is to his independence or impartiality.

(2) An arbitrator, shall from the time of his appointment and throughout the arbitral proceedings, without delay, disclose to the parties any circumstances referred to in sub-section (1) unless they have already been so informed by him.

(3) An arbitrator may be challenged only f circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or be does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

14. Challenge procedure (চ্যালেঞ্জ পদ্ধতি):

(1) Subject to sub-section (6), the parties shall be free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within thirty days after becoming aware of the circumstances referred to in sub-section (3) of section 13, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2), withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge within thirty days from the date of filing the written statement referred to in sub-section (2).

(4) Any party aggrieved by the decision of the arbitral tribunal under sub-section (3), may prefer an appeal to the High Court Division within thirty days from the date of the said decision.

(5) The High Court Division shall decide the matter within ninety days from the date on which it is filed.

(6) If a challenge under any procedure agreed upon by the parties or under the procedures under sub-section (3) or the appeal preferred against the decision is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an award.

15. Termination of arbitrator's mandate (সালিস আদেশের সমাপ্তি):

(1) The mandate of an arbitrator shall terminate.-

(a) he withdraws himself from office:

(b) he dies;

(c) all the parties agree on the termination of his mandate; or

(d) he is unable to perform his functions of his office or for other reasons fails to act without undue delay and withdraws from his office or the parties agree on the termination of his mandate.

(2) If arty arbitrator has incurred disqualifications referred to in clause (d) of subsection (1) fails to withdraw himself from his office and all the parties fail to agree on his termination, then on the application of any party within the prescribed period by rules —

(a) The District Judge, in case of other arbitrations excepting international commercial arbitration;

(b) The Chief Justice or a Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration may terminate the said arbitrator

(3) Where the parties are agreed upon, the termination shall be enforceable by the person agreed by the parties,

(4) If an arbitrator withdraws himself from his office or where all the parties agree on the termination of the mandate of an arbitrator under the circumstances as referred to in clause(d) of sub-section (1), it shall not imply acceptance of the validity on any ground referred to in this clause or in sub section (3) of section.

Explanation: In this section "District Judge" means that District Judge within whose local jurisdiction the concerned arbitration agreement has been entered into.

16. Substitution of an arbitrator whose mandate has been terminated (একজন সালিসের প্রতিস্থাপন যার আদেশ শেষ হয়েছে):

(1) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the provisions applicable to the appointment to the arbitrator whose mandate has been terminated.

(2) In the absence of any agreement between the parties –

(a) The substitute arbitrator shall, at the discretion of the arbitral tribunal continue the hearings from the stage at which the mandate of the arbitrator has been terminated.

(b) Any order or decision of the arbitral tribunal shall not be Invalid before the termination of the mandate of an arbitrator due to such termination.

9.5 Jurisdiction of Arbitration Tribunals
(সালিসী ট্রাইব্যুনালের এখতিয়ার)

17. Competence of arbitration tribunal to rule on its own jurisdiction (সালিসি ট্রাইব্যুনালের নিজস্ব এখতিয়ারে রায় দেওয়ার দক্ষতা): Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction on any questions including the following issues, namely:

(a) Whether there is existence of a valid arbitration agreement.

(b) Whether the Arbitral Tribunal is properly constituted;

(c) Whether the arbitration agreement is against the public policy;

(d) Whether the arbitration agreement is incapable of being performed; and,

(e) Whether the matters have been submitted to arbitration in accordance with the arbitration agreement.

18. Severability of agreement (চুক্তির কঠোরতা): An arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement while giving decision for the purpose of determining the jurisdiction of the arbitral tribunal.

19. Objection as to the jurisdiction of the arbitral tribunal (সালিসি ট্রাইব্যুনালের এখতিয়ার হিসেবে আপত্তি):

(1) An objection that the tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(2) An objection during the course of the arbitral proceedings that the tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority occurs.

(3) The arbitral tribunal may in either of the cases referred to in sub-sections (1) and (2), admit a later plea f it considers the delay justified.

(4) The arbitral tribunal shall decide on an objection referred to in sub-sections (1) and (2), and where the arbitral tribunal takes a decision rejecting the plea, it shall continue with the arbitral proceedings and make an award.

(5) A party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of an arbitrator.

20. Powers of the High Court Division in deciding jurisdiction (এখতিয়ার সিদ্ধান্ত নেওয়ার ক্ষেত্রে হাইকোর্ট বিভাগের ক্ষমতাধরগণ):

(1) The High Court Division, may on the application of any of the parties to the arbitration agreement, after serving notice upon all other parties, determine any question as to the jurisdiction of the arbitral tribunal.

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(2) No application under this section shall be taken into account, unless the High Court Division is satisfied that-

(a) The determination of the question is likely to produce substantial savings in costs;

(b) The application was submitted without any delay; and

(c) There is good reason why the matter should be decided by the Court.

(3) The application shall state— the reasons on which the matter should be decided by the High Court Division.

(4) Unless otherwise agreed by the parties, where any application is pending before the High Court Division under this section the arbitral tribunal shall continue arbitration proceedings and make an arbitral award.

21. Powers of the arbitration tribunal to make interim orders (অন্তর্বর্তী আদেশ দেওয়ার জন্য সালিশ ট্রাইব্যুনালের ক্ষমতা):

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute, and no appeal shall lie against this order.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

(3) No order under this section shall be passed without giving a notice to the other parties:

Provided that the arbitral tribunal may, where it appears that the object of taking interim measure under this section would be defeated by the delay, dispense with such notice.

(4) An order of an arbitral tribunal requiring the taking of interim measures may be enforced by the court, on an application made therefor, by the party requesting the taking of such interim measures.

(5) The application filed before the Court for the enforcement of the interim measures under sub-section (4) shall be deemed not to be incompatible with section 7 or with arbitration agreement or a waiver of the agreement.

22. Settlement other than arbitration (সালিশ ছাড়া অন্য নিষ্পত্তি):

(1) It shall not be incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and with the agreement of all the parties, the arbitral tribunal may use mediation, conciliation or any other procedures at anytime during the arbitral proceedings to encourage settlement.

(2) If during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms,

(3) An arbitral award on agreed terms shall be made in accordance with section 38 and shall state that it is an arbitral award on agreed terms-

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award made in respect of the dispute.

9.6 Conduct of arbitral Proceedings
(সালিসী কার্যক্রম পরিচালনা)

23. General Responsibilities of the arbitral tribunal (সালিসি ট্রাইব্যুনালের সাধারণ দায়িত্ব):

(1) The arbitral tribunal shall deal with any of the dispute submitted to it fairly and impartially and for this purpose:

(a) Each party shall be given reasonable opportunity to present his case orally or in writing or both, and

(b) Each party shall be given reasonable opportunity to examine all the documents and other relevant materials filed by other party or any other person concerned before the tribunal,

(2) The arbitral tribunal shall deal with a dispute submitted to it as quickly as possible.

(3) The arbitral tribunal in conducting proceedings shall act fairly and impartially in deciding procedure and evidence and in exercising other powers conferred on it.

24. The arbitral tribunal not bound by the Code of Civil Procedure and the Evidence Act. (সালিসি ট্রাইব্যুনাল নাগরিক কার্যবিধি কোড এবং প্রমাণ আইনের দ্বারা আবদ্ধ নয়): The arbitral tribunal shall not be bound to follow the provisions of the Code of Civil Procedure and the Evidence Act in disposing of a dispute under this Act.

25. Determination of rules of procedure (বিধি নির্ধারণের পদ্ধতি):

(1) Subject to this Act the arbitral tribunal shall follow the procedure to be agreed on all or any by the parties in conducting its proceedings.

(2) In the absence of any agreement as to the procedure referred to in sub-section (1), the arbitral tribunal shall, subject to this Act, decide, procedural and evidential matters in conducting its proceedings.

(3) Without prejudice to the powers of the parties to include by agreement, or of the arbitral tribunal to include, any other procedural and evidential matters, procedural and evidential matters include—

(a) Time and place of holding the proceedings either in whole or in part;

(b) Language of the proceedings and to supply translation of a document concerned;

(c) Written statement of claim, specimen copy of defence, time of submission and range of amendment.

(d) Publication of document and presentation thereof,

(e) The questions asked to the parties and replies thereof (1) written or oral evidence as to the admissibility, relevance and weight of any materials;

(g) Power of the arbitral tribunal in examining the issue of fact and issue of law.

(h) Submission or presentation of oral or documentary evidence,

(4) The arbitral tribunal may fix the time to enforce its orders and extend the time fixed by it.

26. Place of arbitration (সালিশের স্থান):

(1) The parties shall be free to agree on the place of arbitration.

(2) Failing such agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding anything contained in sub-section (1), or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

27. Commencement of arbitral proceedings (সালিসী কার্যক্রম শুরু): Unless otherwise agreed by the parties, the proceedings shall be deemed to have commenced if -

(a) Any dispute arises where the concerned arbitration agreement applies; and

(b) Any party to the agreement -

(i) Has received from another party to the agreement a notice requiring that party to refer, or to concur in the reference of the dispute to arbitration; or

(ii) Has received from another party to the agreement a notice requiring that party to appoint an arbitral tribunal or to join or concur in, or approve the appointment of, an arbitral tribunal in relation to the dispute.

28. Consolidation of Proceedings and concurrent hearings (কার্যবিধির একীকরণ এবং একযোগে শুনানি):

(1) The parties shall be free to agree upon this respect that-

(a) Any arbitration proceedings shall be consolidated with other arbitral proceedings;

(b) Concurrent hearings shall be held on such terms as may be agreed.

(2) The arbitral tribunal shall have no power to pass any order to consolidate the proceedings or for concurrent hearing, unless the same is given by the parties on agreed terms to the tribunal.

29. Statements of claim and defence (দাবি এবং প্রতিরক্ষা বিবৃতি):

(1) Within the period of time determined by the tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit in future.

(3) Except otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the proceedings, unless the tribunal considers it inappropriate to allow the amendment or supplement for the sake of fairness or having regard to the delay in making it.

30. Hearings and the proceedings (শুনানি এবং কার্যক্রম):

(1) Unless otherwise agreed by the parties, the tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials;

Provided that the tribunal shall hold oral hearings, at an appropriate stage of the proceedings, either on a request by a party, or of its own motion, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient prior notice of any hearing and of any meeting of the tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the tribunal may rely in making its decision shall be communicated to the parties.

31. Legal or other representation (আইনী বা অন্য উপস্থাপনা): Unless otherwise agreed by the parties, a party to an arbitral proceeding may be represented In the proceedings by the lawyer or other person chosen by him.

32. Power to appoint experts, legal advisers or assessors (বিশেষজ্ঞ, আইনজীবী পরামর্শদাতা বা মূল্যায়নকারী নিয়োগের ক্ষমতা):

(1) Unless otherwise agreed by the parties, the arbitral tribunal may-

(a) appoint expert or legal adviser to report to it on spec Issues to be determined by the tribunal; and

(b) appoint assessor to assist it on technical matters; and

(c) require a party to give the expert, legal adviser or the assessor, as the case may be, any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties.—

(a) if a party or the arbitral tribunal so requests, the expert, legal adviser or the assessor, as the case may be, shall after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue;

(b) the expert, legal adviser or the assessor, as the case may be, shall, on the request of a party, make available to that party all documents, goods or other property in the possession of him with which he was provided in order to prepare his report;

(c) the parties shall be given reasonable opportunity to comment on the report, information, opinion or advice submitted in the tribunal by the expert, legal adviser or the assessor.

33. Summons to witnesses (সাক্ষীদের তলব করা):

(1) The arbitral tribunal, or a party to the proceedings with the approval of the tribunal, may apply to the Court for issuing summons upon any person necessary for examining, or submitting materials or appearing, or producing before the tribunal for both the purposes, as the case maybe, and the Court shall issue such summons.

(2) A person shall not be compelled under any summons issued under sub-section (1) to answer any question or produce any documents or materials which that person could not be compelled to answer or produce at the trial in an action before the Court.

(3) Persons failing to attend before the tribunal in accordance with such summons as issued under sub-section (1) or making any other default, or refusing to perform, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like punishments by order of the Court on the representations of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

34. Evidence before the arbitral tribunal (সালিসী ট্রাইব্যুনালের আগে প্রমাণ): Unless otherwise agreed by the parties-

(a) evidence may be given before the arbitral tribunal orally or in writing or by affidavit,

(b) the arbitral tribunal may administer an oath or affirmation to a witness subject to his consent.

35. Powers of the arbitral tribunal in case of default of the parties (পক্ষগুলোর প্রত্যাশিত হওয়ার ক্ষেত্রে সালিসী ট্রাইব্যুনালের ক্ষমতা):

(1) The parties shall be free to agree on the powers of the arbitral tribunal in case of a party's failure to do anything necessary for the proper and expeditious conduct of the arbitration.

(2) Where under sub-section (1) of section 29—

(a) Any claimant fails to communicate his statement of claim, the tribunal shall terminate the proceedings, and

(b) The respondent fails to communicate his statement of defence, the tribunal shall continue the proceeding without treating that failure in itself as an admission of the allegations by the claimant.

(3) If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay —

(a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or

(b) has caused, or is likely to cause, serious prejudice to the respondent, the arbitral tribunal may make an award dismissing the claim.

(4) If without showing sufficient cause a party—

(a) Fails to attend or be represented at an oral hearing of which due notice was given: or

(b) Where matters are to be dealt with in writing fails, after due notice, to submit written evidence or make written submissions, the arbitral tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf and may make an award on the basis of the evidence before it.

(5) If without showing sufficient cause a party fails to comply with any order or directions of the arbitral tribunal, the arbitral tribunal may make an order to comply with such order or directions within such time as it may deem fit.

(6) If a claimant fails to comply with an order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing his claim.

(7) If a party falls to comply with any other kind of order not referred to in any of the sub-sections of this section, then the arbitral tribunal may—

(a) Direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject-matter of the order;

(b) Draw such adverse inferences from the act of non compliance as the circumstances justify,

(c) Proceed to an award on the basis of such materials as have been properly provided to it: or

(d) Make such order, as it thinks fit, as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

9.7 Making of Arbitral Award and Termination of Proceedings
(সালিসী পুরষ্কার এবং প্রক্রিয়া সমাপ্তকরণ)

36. Rules applicable to substance of dispute (বিবাদের ধনসম্পদের জন্য প্রযোজ্য বিধি):

(1) The arbitral tribunal shall decide the dispute in accordance with the rules of law as are designated by the parties as applicable to the substance of the dispute:

Provided that any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country.

(2) Failing any designation of the law under sub-section (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(3) The arbitral tribunal shall decide in accordance with the terms of the contract taking into account the usages of the concerned matter, if any, for ends of justice.

37. Decision making by panel of arbitrators (সালিশীদের প্যানেল দ্বারা সিদ্ধান্ত গ্রহণ):

(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding anything contained in sub-section (1), f authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the Chairman of the arbitral tribunal.

38. Form and contents of arbitral award (সালিশী পুরস্কারের ফর্ম এবং বিষয়বস্তু):

(1) An arbitral award shall be moxie in writing and shall be signed by the arbitrator or arbitrators.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) No reasons shall have to be stated by the arbitral tribunal where the parties have agreed that no reasons are to be given, or the award is an arbitral award on agreed terms under section 22.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 26 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a copy signed by the arbitrator or arbitrators shall be delivered to each party.

(6) Unless otherwise agreed by the parties—

(a) Where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is moxie Interest, at such rate as it deems reasonable, on the whole or any part of money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent per annum which is more than the usual Bank rate from the date of the award to the date of payment.

Explanation: "Bank Rate" under this sub-section means the rate of interest as determined by the Bangladesh Bank from time to time,

(7) Unless otherwise agreed by the parties:

(a) The costs of an arbitration shall be fixed by the arbitral tribunal

(b) The arbitral tribunal shall specify

(i) the party entitled to costs;

(ii) the party who shall pay the costs;

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation: Under this sub-section, 'arbitration costs includes reasonable costs relating to the fees and expenses of the arbitrators and witnesses; legal fees and expenses, any administration fees of the institution supervising the arbitration and any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

39. Award to be final and binding (চূড়ান্ত এবং বাধ্যতামূলক হতে পুরস্কার):

(1) An arbitral award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on both the parties and on any persons claiming through or under them.

(2) Notwithstanding anything contained in sub-section (1) the right of a person to challenge the arbitral award in accordance with the provisions of this Act shall not be affected.

40. Correction and interpretation of awards etc. (পুরস্কার সংশোধন ও ব্যাখ্যা ইত্যাদি):

(1) Within fourteen days from the receipts of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) a party with notice to the other party—

(i) May request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(ii) May request the arbitral tribunal to modify divisible part of the award which has not been sent to the tribunal or f sent it does not affect the arbitral award on the matters sent to the tribunal.

(b) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction, or give the interpretation as the case may be, within fourteen days from the receipt of the request or where the parties agree upon the longer period of time on the request of the arbitral tribunal, within that agreed longer period of time.

(3) The arbitral tribunal may correct any computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the award referred to in clause (a) of sub section (1) within fourteen days from the date of the arbitral award.

(4) Under this section any correction, modification or interpretation, as the case may be, shall form part of the arbitral award.

(5) Unless otherwise agreed by the parties, a party with a notice to the other party, may request, within fourteen days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(6) If the arbitral tribunal considers the request made under sub-section (5) to be justified, it shall make the additional arbitral award within sixty days from the date of receipt of such request.

7) The provisions of sections 38 and 39 shall apply to a correction, mod or interpretation of the arbitral award or to an additional arbitral award made under this section.

40. Termination of proceedings (কার্যধিনি সমাপ্তি):

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) The claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) The parties agree on the termination of the proceedings, or

(c) The arbitral tribunal finds that the continuation of the proceedings unnecessary or impossible.

(3) Subject to the provisions of section 40, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

9.8 Recourse Against Arbitral Award (সালিশী পুরস্কারের বিরুদ্ধে বিধি)

42. Application for setting aside arbitral award (সালিশী পুরস্কার আপীল করে রদের আবেদন):

(1) The Court may set aside any arbitral award under this Act other than an award made in an international commercial arbitration on the application of a party within sixty days from the receipt of the award.

(2) The High Court Division may set aside any arbitral award made in an international commercial arbitration held in Bangladesh on the application of a party within sixty days from the receipt of the award.

43. Grounds for setting aside arbitral award (সালিশী পুরস্কার আপীল করার বিধি):

(1) An arbitral award may be set aside if—

(a) The party making the application furnishes proof that-

(i) A party to the arbitration agreement was under some incapacity;

(ii) The arbitration agreement is not valid under the law to which the parties have subjected it;

(iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable due to some reasonable causes to present his case;

(iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decision on matters beyond the scope of the submission to arbitration,

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which, contains decisions on matters not submitted to arbitration may be set aside;

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with the provisions of this Act, or, in the absence of such agreement, was not in accordance with the provisions of this Act.

(b) The court or the High Court Division, as the case may be, is satisfied that—

(i) The subject-matter of the dispute is ot capable of settlement by arbitration under the law for the time being in force in Bangladesh;

(ii) The arbitral award is prima facie opposed to the law for the time being in force in Bangladesh;

(iii) The arbitral award is in conflict with the public policy of Bangladesh; or

(iv) The arbitral award is induced or affected by fraud or corruption.

(2) Where an application is made to set aside an award, the court or the High Court Division, as the case may be, may order that any money payable by the award shall be deposited in the Court or the High Court Division, as the case may be, or otherwise secured pending the determination of the application.

Explanation: The expression "Court" in this section means the Court within the local limits of whose jurisdiction the arbitral award has been finally made and signed.

9.9 Enforcement of Arbitral Award
(সালিসী পুরষ্কার প্রয়োগ)

44. Enforcement of arbitral award (সালিশী পুরষ্কার কার্যকর করা): Where the time for making an application to set aside the arbitral award under section 42 has expired, or such application having been mode, has been refused, the award shall be enforced under the Code of Civil Procedure, in the same manner as f it were a decree of the Court.

Explanation: The expression "Court" in this section means the Court within the local limits of whose jurisdiction the arbitral award has been finally made and signed.

9.10 Recognition and Enforcement of Certain Foreign Arbitral Awards
(কিছু বিদেশি সালিশী পুরষ্কারের স্বীকৃতি এবং প্রয়োগকরণ)

45. Recognition and enforcement of Foreign arbitral awards (কিছু বিদেশি সালিশী পুরষ্কারের স্বীকৃতি এবং প্রয়োগকরণ):

(1) Notwithstanding anything contained in any law for the time being in force, subject to the provisions of section 46—

(a) Any foreign award which would be enforceable shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Bangladesh.

(b) A foreign arbitral award shall on the application being made to it by any party, be enforced by execution by the Court under the Code of Civil Procedure, in the same manner as f it were a decree of the Court.

(2) An application for the execution of a foreign arbitral award shall be accompanied by —

(a) The original arbitral award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(b) The original agreement for arbitration or a duly certified copy thereof and

(c) Such evidence as may be necessary to prove that the award is a foreign award.

(3) If the award or agreement to be produced under sub section (2) is in English or in any other languages excepting Bangla, the party seeking to enforce the award under sub section (1), shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in Bangladesh.

Explanation: The expression 'Court" shall mean the District Judge's Court exercising the jurisdiction within the district of Dhaka for the purposes of this section.

46. Grounds for refusing recognition or execution of foreign arbitral awards (বিদেশি সালিশী পুরস্কারগুলো স্বীকৃতি বা সম্পাদন অস্বীকার করার জন্য ক্ষেত্রসমূহ):

(1) Recognition or execution of foreign arbitral award may be refused only on the following grounds, namely-

(a) If the party against whom it is invoked furnishes proof to the Court that

(i) A party to the arbitration agreement was under some incapacity;

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it;

(iii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable due to some reasonable causes to present his case; or

(iv) the concerned foreign arbitral award contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, f the decisions on matters submitted to arbitration can be separated rom those not so submitted, that part of the award which contains decisions on r ers submitted to arbitration may be recognised and enforced;

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in absence of such agreement was not in accordance with the law of the country where the arbitration took place;

(vi) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; or

(b) the court in which recognition or execution of the foreign arbitral award is sought, finds that –

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force in Bangladesh; or

(ii) the recognition and execution of the foreign arbitral award is in conflict with the public policy of Bangladesh.

(2) If an application for setting aside or suspension of the enforcement of the foreign arbitral award has been made to a competent authority referred to in sub-clause (v) of clause (a) of sub-section (1) the Court may, f it considers it proper, adjourn the decision on the enforcement of the foreign arbitral award and may also, on the application of the party claiming enforcement of the foreign award, order the other party to give suitable security.

47. Power of Government to declare specified state (সরকারকে নির্দিষ্ট রাষ্ট্র ঘোষণার ক্ষমতা): For the purposes of this chapter, the Government may, by notification in the official Gazette, declare a state as a specified state.

9.11 Appeals
(আবেদন)

48. Appeals: An appeal shall lie from the following orders of the Court to the High Court Division, namely -

(a) Setting aside or refusing to set aside an arbitral award under sub-section (1) of section 42;

(b) Refusing to enforce the arbitral award under section 44;

(c) Refusing to recognize or enforce any foreign arbitral au under section 45.

9.12 Miscellaneous
(বিবিধ)

49. Deposit of costs etc (আমানত ইত্যাদি):

(1) The Arbitral tribunal may fix the amount of the deposit as an advance for the costs referred to in sub-section (7) of section 38, which it expects will be incurred in respect of the claim submitted to it;

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties;

Provided that where one party fails to pay his share of the deposit, the other party may pay that share;

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter claim, the arbitral tribunal may terminate the arbitral proceedings in respect of such claim or counter claim or refuse to make an award to the parties.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unspent balance to the party or parties, as the case may be.

50. Dispute as to arbitrator's remuneration or costs (সালিসের পারিশ্রমিক বা ব্যয় হিসেবে বিতর্ক):

(1) If in arty case art arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the court may, on an application in this behalf, order that

(a) The arbitral tribunal shall deliver the award to the applicant on payment into court by the applicant of the costs demanded; and

(b) The Court shall, after such inquiry, f any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the court may consider reasonable and that the balance of the money if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party where the fees demanded have not been fixed by written agreement between him and the arbitral tribunal, and the tribunal shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

(4) Subject to the provisions of sub-section (1) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

51. Arbitration agreement not to be discharged by death of parties thereto (শালিশ চুক্তি দলগুলো ততক্ষণে মৃত্যু দ্বারা কারামুক্ত করা হবে না):

(1) Unless otherwise agreed by the parties-

(a) An arbitration agreement shrill not be discharged by reason of the death of any party thereto, but shall in such event be enforceable by or against the legal representative of the deceased;

(b) The mandate of an arbitrator shall not be affected by the death of any party by whom he was appointed.

(2) Nothing in this section shall affect the operation of any law relating to abatement of right through the death of a person.

52. Provision in case of bankruptcy (দেউলিয়ার ক্ষেত্রে বিধান):

(1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising therefrom or in connection therewith shall be submitted to arbitration, the said term shall, f the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement is required to be determined in connection with, or for the purpose of the bankruptcy proceedings,

(a) Then, f the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement; and

(b) The Bankruptcy Court may, f it is of opinion that, having regard to all circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Explanation: In this section "Bankruptcy Act" means: "Bankruptcy Act" 1997 (Act No. X of 1997) and 'Receiver" means the receiver as explained in clause (4) of section 2 of the Bankruptcy Act.

53. Jurisdiction (অধিক্ষেত্র): Notwithstanding anything contained elsewhere in this Act, or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Act has been made in a Court-

(a) That court alone shall have jurisdiction over the arbitral proceedings; and

(b) All subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and in no other court.

54. Application of this Act to other laws providing for arbitration (সালিসির জন্য সরবরাহকারী অন্যান্য আইনে এই আইনের প্রয়োগ): Nothing of this Act shall apply to the Industrial Relations Ordinance, 1969 (XXXIII of 1969) or to any other law making special provisions for arbitration.

55. Limitation:

(1) Subject to the provisions of this Act, the Limitation Act, shall apply to arbitrations under this Act as they apply to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, an arbitration shall be deemed to have commenced on the date referred to in section 27.

(3) Where an arbitration agreement to submit future disputes to arbitration provided that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, the court may, on such terms, f any, as the interest of justice, may require, extend the time for such period as it thinks proper.

(4) Where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act

56. Publication of a text in English (ইংরেজিতে একটি পাঠ্য প্রকাশ): After the commencement of this Act the Government shall, by notification in the official Gazette, publish an authentic text in English which shall be known as the Authentic English Text of this Act:

Provided that in the event of any conflict between this Act and the English text, this Act shall prevail

9.13 Supplementary Provisions
(পরিপূরক বিধানসমূহ)

57. Power of the Government to make rules (বিধি প্রণয়নের ক্ষমতা সরকারের): Subject to the provisions of section 58, the Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

58. Power of the Supreme Court to make rules in certain cases (সুপ্রিম কোর্টের ক্ষমতা নির্দিষ্ট ক্ষেত্রে বিধি তৈরি করার ক্ষমতা): The Supreme Court may, with the approval of the President make rules consistent with this Act, for regulating the proceedings of the High Court Division or the Court under this Act.

9.14 Repeals and Savings
(রহিতকরণ এবং সঞ্চয়)

59. Repeal and savings (বাতিল এবং সঞ্চয়):

(1) The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940, hereinafter mentioned as the Acts, are hereby repealed.

(2) Notwithstanding such repeal, the provisions of the enactments as referred to subsection (1) shall apply to all arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties, as f this Act was not made.

EXERCISE

1. Discuss the Construction of References.
2. Describe the Receipt of written communications.
3. Explain the Waiver of right to object.
4. Discuss the Jurisdiction of Court in respect of matters covered by arbitration agreement.
5. Discuss the Powers of court and High Court Division to make interim orders.
6. Explain the Arbitration Agreement.
7. Describe the Arbitrability of the dispute.
8. Briefly discuss the Composition of Arbitral Tribunal.
9. Discuss the Appointment of arbitrators.

10. Write down Grounds for challenge.
11. What are the Challenge procedure.
12. Describe the Termination of arbitrator's mandate.
13. Discuss the Substitution of an arbitrator whose mandate has been terminated.
14. Explain the Jurisdiction of Arbitration Tribunals.
15. Discuss the Competence of arbitration tribunal to rule on its own jurisdiction.
16. Describe the Severability of agreement.
17. What are the Objection as to the jurisdiction of the arbitral tribunal.
18. Discuss the Powers of the High Court Division in deciding jurisdiction.
19. Explain the Powers of the arbitration tribunal to make interim orders.
20. Describe the Settlement other than arbitration.
21. Discuss the Conduct of arbitral Proceedings.
22. Explain the General Responsibilities of the arbitral tribunal.
23. Describe the arbitral tribunal not bound by the Code of Civil Procedure and the Evidence Act.
24. Explain the Determination of rules of procedure.
25. Discuss the Place of arbitration.
26. Explain the Commencement of arbitral proceedings.
27. Discuss the Consolidation of Proceedings and concurrent hearings.
28. Describe the Statements of claim and defence.
29. Briefly discuss the Hearings and the proceedings.
30. Discuss the Legal or other representation.
31. Describe the Power to appoint experts, legal advisers or assessors.
32. Discuss the Summons to witnesses.
33. What are the Evidence before the arbitral tribunal?
34. Discuss the Powers of the arbitral tribunal in case of default of the parties.
35. Explain the Making of Arbitral Award and Termination of Proceedings.
36. Describe the Decision making by panel of arbitrators.
37. Discuss the Form and contents of arbitral award.
38. Explain the Award to be final and binding.
39. Discuss the Correction and interpretation of awards etc.
40. Describe the Recourse Against Arbitral Award.
41. Explain the Application for setting aside arbitral award.
42. What are the Grounds for setting aside arbitral award?
43. Discuss the Enforcement of Arbitral Award.
44. Explain the Recognition and Enforcement of Certain Foreign Arbitral Awards.
45. Describe the Grounds for refusing recognition or execution of foreign arbitral awards.
46. Briefly discuss the Dispute as to arbitrator's remuneration or costs.
47. Discuss the Arbitration agreement not to be discharged by death of parties there to.

বাংলাদেশ আইনগত পরিষদ ২৭ (খ)

CHAPTER-10

The Competition Act, 2012

Syllabus: The Competition Act, 2012: Objective of the Act-Agreement against Competition-Abuse of Dominant Position-Bangladesh Competition Commission-Complaint, Inspection and Disposal-Appeal.

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10.1 The Competition Act, 2012
(প্রতিযোগিতা আইন-২০১২)

(Act No. 23 of 2012)

[21 June, 2012]

An Act to provide for the competition law

Whereas in the context of gradual economic development of the country it is expedient and necessary to enact law to promote, ensure and sustain congenial atmosphere for the competition in trade, to prevent, control and eradicate collusion, monopoly and oligopoly, combination or abuse of dominant position or activities adverse to the competition;

It is hereby enacted as follows:

10.2 Some Important Definition as Described in the Law
(আইনে বর্ণিত কতিপয় গুরুত্বপূর্ণ সংজ্ঞা)

2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context-

(a) "Acquisition" means acquire or agree to acquire, directly or indirectly, shares, voting rights or assets or control over assets or management of any enterprise;

(b) "Practice" means any existing practice relating to the carrying on of any trade by a person or an enterprise;

(c) "Oligopoly" means a situation where some people or enterprises control over the market of goods or services;

(d) "Commission" means the Bangladesh Competition Commission established under sub-section (1) of section 5;

(e) "Cartel" means an association of person or persons who, by direct or indirect agreement, in order to establish monopoly trade, limit, control or attempt to control over the production, distribution, sale or price of goods or services;

(f) "Chairperson" means the Chairperson of the Commission;

(g) "Contract" means

(i) the contract as is defined in section 2(h) of the Contract Act, 1872 (Act IX of 1872);

(ii) the understanding or consensus, formal or informal, written or unwritten, explicit or implicit, whatever it may be, and whether it may be enforceable by law or not, for purchase or sale, production, supply, distribution, control or storage, as the case may be, of goods or services; and includes the following things, namely:-

(1) Tie-in-arrangement;

(2) Exclusive supply agreement;

(3) Exclusive distribution agreement;

(4) refusal to transaction;

(5) resale price maintenance;

(h) "Combination" means in the case of trade acquisition or taking control or amalgamation or merger;

(i) "Goods" means goods as is defined in section 2 (7) of the Sale of Goods Act, 1930 (Act No. III of 1930);

(j) "Regulations" means the regulations made under this Act;

(k) "Rules" means the rules made under this Act;

(l) "Person" includes any person and any institution, company, society, partnership firm, firm, statutory body or any other organization or their agent;

(m) "Enterprise" means any person or economic body or a department of the Government, who or which is, or has been, engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiary, whether such unit or division or subsidiary

is located at the same place where the enterprise is located or at a different place, but does not include any activity relating to the currency or defence of the Government;

(n) **"Trade"** means any production, , business, industry, profession or occupation, control of relating to transaction, supply, distribution, storage or goods and also includes the provision of any service;

(o) **"Monopoly"** means such a situation where only one person or enterprise controls over the market of goods or services;

(p) **"Price"** means in relation to the sale of any goods or to providing any services valuable exchange, whether direct or indirect or deferred, and includes any exchange which in effect relates to the sale of any goods or to the provision of any services although ostensibly relating to any other thing or matter;

(q) **"Collusion"** means any written or unwritten agreement or understanding with ill intention to control the market by destroying environment of the healthy and usual competition in business;

(r) **"Member"** means the Member of the Commission;

(s) **"Relevant market"** means-

(i) a market of goods or services which are exchangeable or changeable by the consumer on the basis of characteristics, price and intended use of the goods or services;

(ii) a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are homogenous and are distinguished from the conditions prevailing in the neighboring areas;

(t) **"Service"** means service of any description which is made available to potential users; and includes the provision of services in connection with business of any industrial or commercial matter.

(2) Words and expressions used but not defined in this Act and defined in the Companies Act, 1994 (Act No. 18 of 1994) shall have the same meanings respectively assigned to them in that Act.

3. Application: This Act shall apply to all enterprises which involve in purchase-sale, production, supply, distribution or storage, as the case may be, of goods or services for commercial purposes.

4. Exemption from this Act: The goods or services which are not open for private sector and controlled by the Government for the national security purposes shall be exempted from this Act.

10.3 Establishment of Bangladesh Competition Commission, Etc (বাংলাদেশে প্রতিযোগিতা কমিশন প্রতিষ্ঠা, ইত্যাদি)

5. Establishment of Bangladesh Competition Commission (বাংলাদেশে প্রতিযোগিতা কমিশন প্রতিষ্ঠা):

(1) After the commencement of this Act, the Government may, as soon as possible, by notification in the Official Gazette, establish a Commission to be called the Bangladesh Competition Commission for the purposes of this Act.

(2) The Commission shall be a statutory body having perpetual succession and subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and shall, in it's name, sue or be sued.

(3) The Commission shall have a common seal, which shall be specific size and description determined by the Commission; it shall be in the custody of the Chairperson and shall be used in the cases determined by the Commission. 4

7. Composition of Commission (কমিশন গঠন):

(1) The Commission shall consist of a Chairperson and not more than 4 (four) Members.

(2) The Chairperson and Members shall, subject to the provisions of sub-section (3), be appointed by the Government and the terms and conditions of their service shall be determined by the rules.

(3) The person, who has knowledge in economics, matters relating to market, public administration or similar subjects or legal profession or legal affairs activities in public-private offices or such other professional experience of not less than 15 (fifteen) years which in the opinion of the Government may be useful for the Commission, shall be eligible for the appointment as the Chairperson and Members of the Commission:

Provided that more than one person experienced in same subject shall not be appointed as Members.

(4) The Chairperson and Members shall be full-time Members and shall be accountable to the Government for discharge their duties.

(5) The Chairperson shall be the Chief Executive of the Commission.

(6) The Chairperson and Member shall hold office for a term of 3 (three) years from the date on which he enters upon his office and shall be eligible for re-appointment of another term:

Provided that the person who has attained the age of 65 (sixty-five) years shall not be eligible for appointment or hold office as Chairperson or Members.

(7) The Chairperson or any other Member may, at any time before the expiry of period mentioned in sub-section (6), by at least 3 (three) months prior notice in written letter signed and addressed to the Government, resign his office:

Provided that the Chairperson or a Member shall, until the letter of resignation is accepted by the Government, continue to hold office.

(8) If the post of the chairperson is vacant or the Chairperson is unable to perform his duties due to absence, illness or for any other reason, the most senior Member shall discharge the functions of the Chairperson until a new appointed Chairperson joins his office or the Chairperson resumes the charge of his functions.

(9) When the Chairperson or a Member dies or resigns under the provision of sub-section (7) or removed, the Government shall, within 60 (sixty) days of such vacancy of post, appoint an eligible person in vacant post.

8. Duties, powers and functions of the Commission (কমিশনের দায়িত্ব, ক্ষমতা এবং কার্যাবলি):

(1) The duties, powers and functions of the Commission are as follows, namely:

(a) To eliminate practices having adverse affect on competition in the market, promote and sustain competition and ensure freedom of trade;

(b) To inquire into, either on receipt of any complaint or suo-moto, any contract of the enterprises against competition, dominant position and practice;

(c) Without prejudice to section 18, to inquire into any offence and to sue and conduct them;

(d) To determine the combination and matters relating to combination, to inquire into for combination and conditions of combination and approval or disapproval of combination;

(e) To make rules, policy, instructions of notifications or administrative directions relating to combination and to give advice and assist the Government for implementation;

(f) To set up appropriate standards for the promotion of competitive activities and training for the matters relating to competition;

(g) To take plan of actions for awareness building among the people about the matters relating to competition by the way of dissemination, publication and other means;

(h) To develop mass awareness by the way of conducting research, seminar, symposium, workshop and other similar means about the anti competition agreement and activities and to publish and disseminate the result of such research and give recommendations to the Government for their effective implementation ;

(i) To implement, follow or consider any matter relating to competition sent by the Government;

(j) To review the actions taken under any other law for the consumer rights protection and implementation;

(k) In order to discharge duties under this section or for proper functioning of it, to sign and execute any agreement or Memorandum of Understanding (MOU) with the foreign organization, with the prior approval of the Government;

(l) To fix fees, charges or any other expenses for the purposes of this Act; and

(m) To do any other activities specified by the rules for the purposes of this Act.

(2) The Commission may, either on its own motion or on any allegation, inquire any complaint made under this Act.

(3) The Commission or, as the case may be, the Chairperson or any Member may exercise the same power as a civil court exercises under the Code of Civil Procedure, 1908 (Act V of 1908) in the following matters, namely:

(a) Summoning and enforcing the attendance of any person before the Commission;

(b) Discovery and production of any document;

(c) Examining and inspection any information;

(d) Requisitioning any necessary document or its copy from any office;

(e) Issuing notice for examination of witness and document;

(f) Taking any action for the purpose of this sub-section.

(4) The Commission may direct any person to produce before the Commission or an officer authorized by it in this behalf, such books, accounts or other documents, which is related to any trade and the examination of which is required for the purposes of this Act, in his custody or under his control, and the person so directed shall be bound to produce such information.

(5) The Commission may call upon such experts from the fields of economics, commerce, accounting or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry and such person shall take proper steps to assist the Commission as per direction.

(6) All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 for the purpose of the section 196 of the Penal Code, 1860 (Act XLV of 1860), and the Commission shall be deemed to be a civil court for the purpose of section 35 and 195 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(7) If any person interferes in the exercise of the power of the Chairperson or any person authorized under sub-section (3) or intentionally fails to comply with the order made under the said sub-section shall be an offence under this Act and such person shall be punishable with imprisonment for a term not exceeding 3 (three) years or fine or with both.

9. Removal of Chairperson and Members (চেয়ারপারসন ও সদস্যদের অপসারণ):

(1) The Government may remove the Chairperson or any Member from his office on any or more of the following grounds if he, namely:

(a) is adjudged as an insolvent by a competent court;

(b) has appointed in any post in consideration of wages out of his own service;

(c) has been declared as lunatic by a competent court;

(d) has been convicted of an offence involving moral turpitude;

(e) has become physically or mentally incapable of performing his duties;

(f) has so abused his position as to render his continuance in office in the opinion of the Government is prejudicial to the public interest.

(2) No action shall be taken against the Chairperson or any Member under sub-section (1) without giving reasonable opportunity of being heard.

10. Status, salary and allowances of Chairperson and Members (চেয়ারপারসন ও সদস্যদের পদ, বেতন এবং ভাতা):

(1) The status, salary, allowances and other ancillary facilities of the Chairperson and Members shall be determined by the Government.

11. Meeting of the Commission (কমিশনের সভা):

(1) Subject to the provisions of this Act, the Commission shall determine the procedure of its meeting.

(2) The Commission shall meet at least once in every 4 (four) months and the date, time and place of the meeting shall be determined by the Chairperson:

Provided that the Chairperson may, for any special purpose, at any time, call its emergency meeting.

(3) The Chairperson shall preside over all meetings and in his absence any Member nominated by the Member present at the meeting shall preside over the meeting.

(4) The quorum of the meeting shall be constituted by the presence of the Chairperson and at least 2 (two) Members.

(5) Every member shall have one vote in making decision of the meeting of the Commission and, in the event of equality of votes, the person presiding shall have a second or casting vote.

(6) No act or proceeding of the Commission shall be invalid or cannot be raised any question merely on the ground of any vacancy in, or any defect in the constitution of, the Commission.

(7) The minutes of the meeting shall be signed by the President of the meeting and a copy of it shall be sent to the Government within 20 (twenty) days of the meeting.

12. Appointment of Secretary, officers and employees of Commission, etc. (সচিব, কমিশনার কর্মকর্তা-কর্মচারী নিয়োগ):

(1) There shall a Secretary for the Commission, who shall be appointed by the Government and the terms and conditions of the service shall be determined by the Government.

(2) The Commission may appoint necessary number of officers and employees for the efficient performance of its functions under this Act.

(3) The salary, allowance and other terms and conditions of service of the officers and employees of the Commission shall be prescribed by rules:

Provided that the Government may, in request of the Commission, depute any officer or employee of the civil service to the Commission.

13. Restriction on certain employment of Chairperson and other Members after cession of service (চাকরির অধিবেশন শেষে চেয়ারপারসন এবং অন্যান্য সদস্যদের নির্দিষ্ট কর্মসংস্থানের উপর নিষেধাজ্ঞা): The Chairperson and any Members shall not, for a period of 1 (one) year from the date on which he ceases to hold office, be employed, or connected with the management or administration of, any enterprise which was or may be a party to a proceeding before the Commission under this Act.

14. Exchange of opinion between Commission and statutory authority (কমিশন এবং সংবিধিবদ্ধ কর্তৃপক্ষের মধ্যে মতবিনিময়):

(1) When any person raises the question that any course of proceeding of the statutory authority or any decision of such authority would be contrary to any of the provisions of this Act, then such statutory authority may, on its own motion, send the question suspending the proceeding to the Commission for taking proper action on it.

(2) On receipt of a reference from any statutory authority under sub-section (1) the Commission shall give its opinion within 60 (sixty) days of receipt of such reference to such authority and such authority shall take necessary action or conduct the proceeding in accordance with the opinion.

(3) Where in the course of a proceeding before the Commission an issue is raised by any person that any decision or proposed decision of the Commission is or would be contrary to any provision of this Act and whose implementation is entrusted to a statutory authority, then the Commission may, on its own motion, send the issue suspending the proceeding for taking proper action on it.

(4) On receipt of a reference form Commission under sub-section (3) the statutory authority shall give its opinion within 60 (sixty) days of receipt of such reference to the Commission and the Commission shall take necessary action or conduct the proceeding in accordance with the opinion.

(5) In order to consider the opinion received under sub-section (2) or (4), the Commission or, as the case may be, the statutory authority shall, if necessary, dispose the matter, in accordance with the law upon the consensus of the Commission and the statutory authority.

10.4 Prohibition of Anti Competition Agreement, Abuse of Dominant Position, Etc
(বিরোধী প্রতিযোগিতা চুক্তির নিষিদ্ধকরণ, প্রভাবশালী অবস্থানের অপব্যবহার, ইত্যাদি)

15. Anti competition agreement (বিরোধী প্রতিযোগিতা চুক্তি):

(1) No person shall enter into any agreement or collusion, express or implied, in respect of production, supply, distribution, storage or acquisition which causes or is likely to cause an adverse affect on competition or creates monopoly or oligopoly in the market.

(2) Any agreement, the practice or decision of any person or association who are engaged in identical or similar trade of goods or services shall be deemed to have adverse affect on competition in goods or services market if-

(a) Directly or indirectly-

(i) determines abnormal purchase or sale prices; or

(ii) determine the deceptive price in all process including bid rigging;

(b) Limits or controls production, supply, markets, technical development, investment or provision of services;

(c) Shares the market or source of production or provision of services by the way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

Explanation: For the purposes of this section "bid rigging" means any agreement which creates favorable condition for the parties to the agreement or, as the case may be, beneficiaries, by reducing competition for bids or adversely affecting the process of bidding.

(3) For the purposes of this section the following cases and agreements shall be deemed to anti competition agreement if they have adverse affect on competition, namely:

(a) "tie-in arrangement" i.e. any agreement or understanding requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods or facilities form any other person or enterprise engaged by the seller ;

(b) "exclusive supply agreement" i.e. any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller;

(c) "exclusive distribution agreement" i.e. any agreement limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

(d) "refusal to deal" i.e. any agreement which restricts, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) "resale price maintenance" i.e. any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(4) Nothing contained in sub-section (1) shall restrict- 10

(a) The right of any person, to restrain any infringement of, or for protecting intellectual property rights conferred under the intellectual property law, to impose reasonable conditions; and

(b) The right of any person to export goods from Bangladesh to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

16. Abuse of dominant position (প্রভাবশালী অবস্থানের অপব্যবহার):

(1) No enterprise shall abuse its dominant position.

(2) For the purpose of sub-section (1) it shall be deemed an abuse of dominant position, if an enterprise-

(a) Imposes directly or indirectly unfair or discriminatory condition in purchase or sale of goods or service or discriminatory price or predatory price in purchase or sale of goods or service;

(b) Limits or restricts production of goods or provision of services or market thereof or technical or scientific development relating to goods or services to the prejudice of consumers;

(c) Indulges in practice or continue to do practices which denies the market access of others;

(d) Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) Uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation: For the purposes this section,-

(a) "dominant position"-means a position of strength enjoyed by an enterprise in the relevant market which enables it to-

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) "predatory price" means the sale of goods or provision of services at a price which is below the cost of production of the goods or provision of services with a view to reduce or eliminate competition.

10.5 Compliant, Inquiry, Order, Etc
(সঙ্গতিশীল, তদন্ত, অর্ডার ইত্যাদি)

17. Pre-inquiry procedure (প্রাক তদন্ত পদ্ধতি): In order to protect the interest of the consumers and competitors in the market if it appears to the Commission that it is necessary to prevent immediately any agreement, misuse of dominant or collusion which cause or likely to cause adverse affect on the relevant market, the Commission may, after giving reasonable opportunity of being heard the concerned parties, settle the issue with necessary directions before conducting inquiry under this Act.

18. Inquiry, etc. (তদন্ত):

(1) If the Commission has reason to believe that any enterprise has entered into any agreement or misused dominant position which is harmful to the relevant market, the Commission may, suo-moto or on receipt of complaint from any one, inquire into the matter.

(2) The commission may make regulations regarding the procedures of inquiry under sub section (1).

19. Power to issue interim order (অন্তর্বর্তীকালীন আদেশ জারি করার ক্ষমতা): During an inquiry, if the Commission is satisfied that any person violates the provision of sub-section (1) of section 15 or sub-section (1) of section 16 or section 21 which is an offence under this Act and continues to be committed such offence or likely to be committed the offence, the Commission may, by considering the importance of the matter and giving the parties reasonable opportunity of being heard, by order temporarily restrain such person from carrying on such act including daily works, subject to not causing irreparable loss to any one or more of the parties, until the conclusion of such inquiry or until further orders.

(2) The time of interim order shall not be extended more than the following time-

(a) till the conclusion of hearing the allegation of violation under sub-section (1);

(b) not more than 60 (sixty) days from the date of order:

provided that in response to the opinion of the Commission such time may be extended for further 60 (sixty) days.

(3) Any party may file an appeal within 30 (thirty) days from the date of interim order issued by the Commission.

(4) Notwithstanding the appeal or duration of appeal procedure, if there is no contrary instruction by the Commission such interim order shall be binding and effective on the parties.

20. Proceeding after inquiry (তদন্ত শেষে প্রক্রিয়া): If it appears to the Commission after inquiry under section 18 that any person made an anti-competition agreement or misused dominant position, the Commission may take any one or more than one of the following measure, namely:

(a) Direct any person involved in such agreement or abuse of dominant position-

(i) To discontinue and not to re-enter such agreement or discontinue such abuse of dominant position;

(ii) Impose an administrative financial penalty as it may deem fit which shall be not more than 10% of the average of the turnover for the last three preceding financial years;

(b) In case an agreement referred to in section 15 has been entered into by a cartel, impose upon every person included in that cartel an administrative financial a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% of its turnover for each year of the continuance of such agreement, whichever is higher;

(c) If any person fails to pay the financial penalty under clause (a) and (b), impose fine not more than 1 (one) lac for every day;

(d) Pass such any order as it may deem fit for preservation of competition including division of an enterprise enjoying dominant position.

Explanation: For the purpose this section "turnover" means all sums receivable or received for the supply of manufactured or produced goods or for the provision of services by a person for a specific time.

21. Prohibition of Combination (সংমিশ্রণ নিষিদ্ধ):

(1) The combination which causes an adverse affect on competition in goods or services market shall be prohibited:

Provided that the Commission may approve any combination on an application after inquiry if such combination shall not cause or likely to cause adverse affect on the competition, and the cases of combination which are required for approval of the Commission shall be determined by regulations.

(2) For the purpose of sub-section (1), in the case of a combination referred in that sub-section, if the commission is satisfied after inquiry and investigation determined by regulations that any combination -

(a) Shall not cause or likely to cause an adverse affect on competition the Commission may approve such combination by an order; or

(b) Shall cause or likely to cause an adverse affect on competition the Commission shall not approve such combination.

22. Application for inquiry for acts committed outside of Bangladesh (বাংলাদেশের বাইরে প্রতিযোগিতাবিরোধী আইনগুলোর তদন্তের জন্য আবেদন): If an anti competition act committed outside of Bangladesh by a person or enterprise which causes an adverse affect on the relevant market, the Commission may inquire into the matter in accordance with the laws, rules, etc of the both countries.

23. Appearance before the Commission (কমিশনের সামনে হাজির হওয়া): Any person may, by himself or by a representative, produce his statement or allegation or opposition before the Commission.

10.6 Review, Penalty, Appeal, Etc (পর্যালোচনা, দণ্ড, আপিল ইত্যাদি)

24. Contravention of orders of Commission, etc. (কমিশন ইত্যাদির আদেশের লঙ্ঘন): If any person, without reasonable cause, contravenes any order or direction made or any condition or restriction imposed or any approval given by the Commission shall be deemed to be an offence and for such offence he shall be punishable with imprisonment for a term not exceeding 1 (one) year or fine not exceeding 1 (one) lac taka for each day of non-compliance.

25. Cognizance of offence and trial (অপরাধ এবং বিচারের জ্ঞান):

(1) No Court shall take cognizance of an offence under this Act except on a complaint made by the Commission or any officer authorized by the Commission.

(2) The offence under this Act shall be tried by the Magistrate of First Class or, as the case may be, Metropolitan Magistrate.

26. Application of Code of Criminal Procedure (ফৌজদারী কার্যবিধির প্রয়োগ):

(1) Subject to this Act, rules and regulations, the Code of Criminal Procedure shall be applicable to the investigation, trial, appeal and all ancillary matters relating to an offence under this Act.

(2) Any case initiated on the basis of the report of an officer authorized by the Commission under this Act shall be deemed to be a case initiated on the basis of the report of a police officer under the Code of Criminal Procedure.

27. Bar to second trial (দ্বিতীয় বিচারে বার): If a person is convicted or not guilty of administrative or of other offence under this Act, he shall not be punished for the same offence under any other law.

28. Recovery of demand of the Commission (কমিশনের দাবি আদায় করা): Any demand of the Commission from any person may be recovered in accordance with the provisions of the Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

29. Review of orders of Commission, appeal, etc. (কমিশনের আদেশ, আপিল ইত্যাদির পুনর্বিবেচনা):

(1) Any person is aggrieved by an order of the Commission may, within 30 (thirty) days from the date of the order, subject to in the specified form and to payment of fees determined by the regulations, apply-

(a) to the Commission for review; or

(b) to the Government for appeal:

Provided that any person is aggrieved by an order of administrative financial penalty under section 20 the person shall apply -

(a) To the Commission for review along with the deposit receipt of 10% of the fine imposed; or

(b) To the Government for appeal along with the deposit receipt of 25% of the fine imposed.

(2) If the Commission, or the Government, as the case may be, is satisfied that the applicant was failed to apply within the time specified in sub-section (1) for reasonable cause, the Commission, or the Government, as the case may be, may extend further 30 (thirty) days on his application.

(3) In the case review the Commission, and in the case of appeal the Government, may not amend, modify or cancel an order given in favour of a person without giving him an opportunity of being heard:

Provided that the Commission or the Government shall dispose the review or, appeal, as the case may be, within 60 (sixty) days from receipt of application.

(4) The order of the Commission in review and the order of the Government in appeal shall be deemed to be final.

30. Appeal (আবেদন):

(1) If any party is aggrieved by a judgment or order passed by the Magistrate may file an appeal to the Sessions Judge Court having local jurisdiction within 60 (sixty) days from the date of the decree or order:

Provided that if fine is imposed by a judgment or order of the Magistrate, the person aggrieved by such judgment or order shall apply to the Sessions Judge Court with the receipt of payment of 25% of the fine.

(2) The order passed by the Sessions Judge Court shall be deemed to be final.

10.7 Financial Matter of The Commission (কমিশনের আর্থিক বিষয়)

31. Competition Fund (প্রতিযোগিতা তহবিল):

(1) There shall be a fund to be called the Competition Fund for the purpose of the Act.

(2) The administration of the Competition Fund, hereinafter referred as Fund, shall, subject to the provision of this section and rules, vest in the Commission.

The following money shall be deposited to the Fund, namely:-

(a) annual grants made by the Government;

(b) fees, charge, etc deposited under this Act;

(c) interests of the money deposited in the bank;

(d) any other sources not prohibited under the existing law.

(4) The salary, allowances and other sums payable in accordance with the terms and conditions of the service of the Chairperson, Members, officers and employees shall be paid from the Fund and bears all necessary expenses of the Commission from the Fund.

(5) The money of the Commission shall be spent only for the payment of implementation of its functions and the money for daily activities shall be kept in a scheduled bank specified by the Commission and the drawing of money from the bank shall be determined by the regulations.

Explanation: In this section "scheduled bank" means the scheduled bank as is defined in article 2 (j) of the Bangladesh Bank Order, 1972 (P.O. 127 of 1972).

(6) The residue of the Fund shall be deposited to the Consolidated Fund of the Bangladesh Government.

32. Independence of the Commission in respect of expense of money (অর্থ খরচ ক্ষেত্রে কমিশনের স্বাধীনতা): The Government shall allocate a specific amount of money for expense to the Commission for every financial year; and it shall not be required to get permission from the Government to spend the money in the approved and specified heads of budget.

33. Annual statement of budget (বাজেটের বার্ষিক বিবৃতি): The Commission shall, by such date in each year as may be specified by the Government, submit to the Government for approval a budget for the next financial year and it shall be mentioned how much money is required from the Government for that financial year and the Government shall approve the budget on the basis of the said statement of the budget.

34. Audits and accounts (নিরীক্ষা এবং হিসাবাদি):

(1) The Commission shall maintain its accounts properly and prepare a statement of annual accounts.

(2) The Comptroller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, shall audit the accounts of the Commission every year and shall submit a copy of audit report to the Government and the Commission.

(3) For the purpose of audit under sub-section (2), the Auditor-General or any person authorized by him in this behalf shall have access to all records, documents, cash, deposits in bank, securities, stores and other property of the Commission and may examine any Member or any officer or employee of the Commission.

10.8 Miscellaneous (বিবিধ)

35. Offences by company, etc. (অপরাধ সংস্থা, ইত্যাদি): (1) If an offence under this Act is committed by a company, the owner, Director, Manager, Secretary or any other officer or employee or agent who has direct involvement in such offence shall be deemed to committed the offence, unless he prove that the offence was committed without his knowledge or he exercised all due diligence to prevent the commission of such offence.

Explanation: For the purposes of this section-

(a) "company" includes statutory authority, commercial institution, partnership firm, society or any association of individual or individuals; and

(b) "director" includes any partner or member of the governing body, whatever the name of it.

36. Restriction on disclosure of information (তথ্য প্রকাশে বাধা):

(1) For the purposes of this Act, no information relating to any enterprise which has been obtained by or on behalf of the Commission shall, without the prior permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

(2) If any officer or employee of the Commission violates the provision of sub-section (1), departmental proceeding or legal may be brought against him.

37. Power of Government to issue directions (নির্দেশনা জারি করার ক্ষমতা):

(1) Without prejudice to the provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions of the Government on questions of policy other than those relating to implementation, technical and administrative matters of the Act:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub- section.

(2) The decision of the Government whether a question is of policy or not shall be final.

38. Delegation of power (ক্ষমতা অভিযোজন):

(1) The Member of the Commission shall discharge their duties under the guidance and control of the Chairperson and the Members shall be accountable to the Chairperson for discharging their duties.

(2) The Commission may, subject to conditions as may be specified by it, delegate any of its power to its any officer.

39. Annual statement (বার্ষিক বিবৃতি):

(1) The Commission shall, within 90 (ninety) days of the end of every financial year, submit to the President an annual statement on the conduct of its affairs for that year.

(2) The President shall cause the report laid before the Parliament after receiving it under this section.

40. Public servant (সরকারি কর্মচারী): The Chairperson, Members and other officers and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Penal Code.

41. Protection of action taken in good faith (সৎ বিশ্বাসে গৃহীত পদক্ষেপের সুরক্ষা): If any person is injured or likely to be injured by anything done in good faith under this Act or rules or regulations made thereunder, no civil or criminal case or other legal proceedings shall lie against the Commission, any Member or officer or employee or any publication, report or proceeding of the Commission or the Government.

42. Provisions of this Act are additional (এই আইনের বিধানগুলো অতিরিক্ত): The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force:

Provided that the provisions of this Act shall override the provisions of other laws for the time being in force to implement and fulfill the object and purpose of this Act.

43. Power to make rules (বিধি তৈরি ক্ষমতা): The Government may, by notification in the official gazette, make rules to carry out the provisions of this Act.

44. Power to make regulations (প্রবিধান প্রণয়নের ক্ষমতা): (1) The Commission may, with the approval of the Government and by notification in the official gazette, make regulations not inconsistent with this Act and the rules to carry out the purposes of this Act.

45. Publication of authentic English text (খাঁটি ইংরেজী পাঠের প্রকাশ):

(1) The Government shall, after commencement of this Act, by notification in the official gazette, publish an authentic English text of this Act.

(2) In the case of conflict between Bangla and English text the Bangla shall prevail.

46. Repeal And saving (বাতিল এবং সংরক্ষণ):

(1) The Monopolies and Restrictive Trade Practices Act, 1970 (Ord. V of 1970) is hereby repealed.

(2) Notwithstanding such repeal-

(a) Any act done or any or all action implemented or taken under it shall be deemed to be done, implemented or taken under this Act: and

(b) Any proceeding pending under it shall be continue as if it had been taken under this Act.

EXERCISE

1. Discuss the Establishment of Bangladesh Competition Commission, Etc.
2. Explain the Composition of Commission.
3. Describe the Duties, powers and functions of the Commission.
4. Briefly discuss the Removal of Chairperson and Members.
5. Discuss the Status, salary and allowances of Chairperson and Members.
6. Explain the Meeting of the Commission.
7. Discuss the Appointment of Secretary, officers and employees of Commission, etc..
8. Describe the Restriction on certain employment of Chairperson and other Members after cession of service.
9. Explain the Exchange of opinion between Commission and statutory authority.
10. Discuss the Prohibition of Anti Competition Agreement, Abuse of Dominant Position, Etc.
11. Discuss the Abuse of dominant position.
12. Explain the Compliant, Inquiry, Order, Etc.
13. Describe the Prohibition of Combination.
14. Discuss the Application for inquiry for acts committed outside of Bangladesh.
15. Explain the Appearance before the Commission.
16. What are the Review, Penalty, Appeal, Etc?
17. Discuss the Contravention of orders of Commission, ete.
18. What are the Cognizance of offence and trial.
19. Describe the Application of Code of Criminal Procedure.
20. What are the Bar to second trial.
21. Explain the Recovery of demand of the Commission.
22. Discuss the Review of orders of Commission, appeal, etc.
23. Describe the Financial Matter of The Commission.
24. Discuss the Competition Fund.
25. Describe the Independence of the Commission in respect of expense of money.
26. Explain the Annual statement of budget.
27. Write down Audits and accounts.
28. Discuss the Restriction on disclosure of information.
29. Explain the Power of Government to issue directions.
30. What are the Protection of action taken in good faith.
31. Discuss the Provisions of this Act are additional.
32. Describe the Publication of authentic English text.

National University Question

BBA Second Year Third Semester Examination, 2019

(According to the new syllabus)

Legal Environment of Business

[N.B. The figure in the right margin indicate full marks.]

Part-A Short Question **(Answer any six questions)**

Marks: 5 × 6 = 30

1. (a) Define contract.
   (b) Distinguish between an agreement and a contract.
2. An offer must be communicated to the offere.-Explain with example.
3. (a) Define valid, void and voidable agreement.
   (b) Distinguish between void agreement and voidable agreement.
4. (a) Define negotiable instruments.
   (b) Who can cross a cheque?
5. (a) Who can be a partner?
   (b) What are the duties of a partner?
6. (a) What does mean by a company?
   (b) What is the difference between AGM and EGM?
7. (a) Define a contract of indemnity.
   (b) In what cases contracts of guarantee is invalid?
8. (a) Define inspector.
   (b) What are the functions of chief inspector and inspectors of a factory?
9. When a contract is said to be free? Distinguish between coercion and undue influence.
10. "No seller can give the buyer better title of goods than he himself has."-Are there any exemptions to this rule?

Part-B Broad Question **(Answer any four questions)**

Marks: 10 × 4 = 40

11. (a) Define consideration state the essential factors of consideration.
    (b) "A stranger to a contract connect sue to enforce the contract."-Discuss.
12. (a) Distinguish between sale and agreement to sell.
    (b) When does the transfer of ownership time off pass from the seller to the buyer?
    (c) What are the rules regarding of goods under the sale of goods act, 1930.
13. (a) Describe the procedures for the formation of a public Ltd. company.
    (b) Classify the meeting of a company. What do you mean by statutory meeting and statutory report?
14. (a) Discuss the circumstances in which a company may be wound up by the court.
    (b) Show the differences between members voluntary winding up and creditors' voluntary winding up.
15. (a) Describe the provision's relating to health and hygiene of workers.
    (b) State in details the provisions relating to the safety of workers.
16. (a) Define branch of contract. Explain some important remedies for breach of contract.
    (b) State the duties of an agent to the principal.
    (c) Define prospectus. State the contents of prospectus.

17. Write short notes:
    (a) Contingent contract
    (b) Bailment
    (c) Doctrine of Caveat emptor
    (d) Promissory note
    (e) Annual leave with wages

BBA SECOND YEAR FOURTH SEMESTER EXAMINATION-2017

COMMERCIAL LAW

[N.B- The figures in the right margin indicate full marks. All parts of each question must be answered sequentially.]

Part A- Short Questions (Answer any **five** questions)

Marks- 6×5 = 30

1. (a) Define bailment. What are the requisites of bailment? 3
   (b) Distinguish between a contract of guarantee and a contract of indemnity. 3
2. "No seller of goods can give the buyer of goods a better title to those goods than he himself has". Briefly discuss. Are there any exceptions to this rule? 6
3. Define consent. State when a consent is not said to be free according to the law. 6
4. (a) Define the term "Statement in lieu of prospectus". 2
   (b) What are the contents of the prospectus of a company? 4
5. (a) Define agreement and contract. 3
   (b) Shortly discuss the essential elements of agreement. 3
6. State the rights and duties of a shareholder of a company. 6
7. Discuss the methods of appointment of a director in a joint stock company according to the Company's Act of Bangladesh, 1994. 6

Part B- Broad Questions (Answer any **four** questions)

Marks- 10×4 = 40

8. (a) What is cheque? Discuss the various ways in which a cheque can be crossed. 3
   (b) What are the rights of a "Holder in Due Course" of a negotiable instruments? 3
   (c) In what different ways may a negotiable instrument be dishonored? What steps should be taken by the holder of a dishonored instrument? 4
9. (a) What is the doctrine of "Caveat Emptor"? Explain the exceptions of the principle of "Caveat Emptor" 4
   (b) Differentiate between 'Condition' and 'Warranty'. 3
   (c) Who is an unpaid seller? When and under what circumstances can a seller exercise the right of re-sale? 3
10. (a) Can a minor become a member of a partnership firm? If, so, briefly mention his rights and liabilities under the Partnership firm. 4
    (b) Describe the consequence of non-registration of partnership firm. 3
11. (a) Define "Statutory Meeting". Describe the contents of statutory report. 3
    (b) Contrast between the Memorandum of Association and Articles of Association of a Limited Company. 3
    (c) When and how the Memorandum can be altered? 4

12. (a) Explain the "Doctrine of Supervening impossibility". 3
(b) What do you mean by consideration? Discuss the factors of consideration. 3
(c) Define breach of contract. Explain some important remedies for breach of contract. 4

13. (a) Suppose you and your 3 friends are running ABC private limited company for the last 5 years. Due to some recent issues you observed that it is not possible to continue it as a private limited company and thinking to convert it into public limited company. What types of formalities you have to maintain to convert ABC company from private limited to public limited? 5
(b) Define winding up of a company. When the court can take initiative to wind up a company?

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2013

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions) (Answer any five questions)

Marks - 5×5=25

1. a) How is an offer to be communicated? 2
b) When does an offer lapse? and how? 3
2. a) When is consent said to be free? 2
b) Distinguish between coercion and undue influence. 3
3. a) What do you understand by performance of a contract? 2
b) Under what circumstances a contract need not be performed? 3
4. a) Distinguish a 'condition' from a 'warranty' according to sale of Goods Act. 3
b) State the differences between hire-purchase and instalment sale. 3
5. "No consideration no contract" - state this rule with exceptions. 5
6. Contrast between fraud and misrepresentation. Define void agreement and voidable agreement. 5
7. a) What is the doctrine of caveat emptor? 2
b) When and under what circumstances can a seller exercise the right of re-sale? 3

Part- B (Board Questions) (Answer any three questions)

Marks - 15×3=45

8. (a) "All agreements are not contracts, but all contracts are agreements." Discuss. 10
(b) State the cases in which an agreement without consideration is valid. 5
9. (a) Define "Certificate of incorporation of a company", "Prospectus" and "Statement in lieu of prospectus". 6
(b) State the rights, duties and liabilities of a shareholder. 9
10. (a) Define Negotiable Instruments and what are the essential features of a Negotiable Instruments. 10
(b) What are the rights of a "holder in due course" of a Negotiable Instrument? 5
11. (a) Differentiate between Memorandum of Association and Articles of Association. 8
(b) When and how the Memorandum can be altered? 3
(c) What are the rules regarding endorsement? 4
12. (a) Distinguish between sale and agreement to sale. 3
(b) 'No seller of goods can give the buyer of goods a better title to those goods than he himself has' – briefly discuss. Are there exceptions to this rule? 7

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2012

Subject code: 2204

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions) (Answer any five questions)

Marks - 5×5=25

1. (a) "An offer must be expressed" – Explain. 3
   (b) How is an offer to be communicated? 2
2. (a) "Consideration must be real" – Explain. 3
   (b) What do you mean by unlawful agreements? 2
3. (a) What are the differences between indemnity and guarantee? 3
   (b) When is a surety discharged from liability? 2
4. (a) Define hire purchase agreements. 2
   (b) When a condition can be treated as a warranty? 3
5. (a) What is the doctrine of caveat emptor? 2
   (b) When and under what circumstances can a seller exercise the right of re-sale? 3
6. (a) What do you mean by winding up a company? 2
   (b) Write circumstances under which a company may be wound up by the court. 3
7. (a) Can a minor become a member of a partnership firm? If so, briefly mention his rights and liabilities under the partnership Act. 5

Part- B (Board Questions) (Answer any three questions)

Marks - 15×3=45

8. (a) "A contract is an agreement enforceable by law." – Explain. 5
   (b) What are the essential elements of contract? 5
   (c) State the differences between agreement and contract. 5
9. (a) What is negotiable instrument? 3
   (b) What are the essential features of a negotiable instrument? 7
   (c) Distinguish between promissory note and bill of exchange. 5
10. (a) State the points of difference between the memorandum of Association and the Articles of Association of a Limited Company. 8
    (b) Discuss the "doctrine of ultra vires" in the Companies Act. 7
11. (a) What are the distinctions between sale and agreements to sale? Give example. 5
    (b) Discuss the rules regarding transfer of title by non-owner according to the sale of goods Act. 10
12. (a) What is a quasi-contract? Give some examples of quasi-contract. 5
    (b) State when a consent is not said to be free according to the law. 10

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2011

Subject code: 2204

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequential(y.]

Part- A (Short Questions) **(Answer any five questions)**

Marks - 5×5=25

1. (a) Define contract. 2
   (b) Explain the essential elements of contract. 3
2. (a) Distinguish between offer and acceptance. 3
   (b) How and when an offer be revoked? 2
3. (a) Define with example each of the following: 2
   (i) Void agreement;
   (ii) Violable agreement;
   (b) Distinguish between coercion and undur influence. 3
4. (a) What is negotiable instrument? 2
   (b) What are the essential features of negotiable instrument? 3
5. (a) What do you mean by Memorandum of Association? 2
   (b) State the contents of a Memorandum of Association? 3
6. State the effect upon contract for out break of war. 5
7. In what circumstance the court may think the Liquidation of a company just and equitable? 5

Part- B (Board Questions) **(Answer any three questions)**

Marks - 15×3=45

8. (a) "No seller can give the buyer a better title of goods than he himself has." – Discuss. 5
   (b) What do you mean by contingent contract? 4
   (c) Mention the procedure of registration and incorporation. 6
9. (a) What do you understand by Caveat Emptor and state its exceptions. 4
   (b) What is meant by "Statutory Meeting"? Discuss the contents of a statutory report. 6
   (c) State the usual steps to be taken in the formation of a company under he Companies Act, 1994. 5
10. (a) What are the rules regarding delivery of goods under the state of Goods Act? 5
    (b) What are the rights of an unpaid seller? 5
    (c) Define Bailment. What are the requisites of bailment? 5
11. (a) Distinguish between promissory note and bill of exchange. 5
    (b) What qualifications does a shareholder of a joint stock company need to have to qualify as director? 6
    (c) State the consequences of a a partnership firms. 4
12. (a) Describe the methods of appointment of Director. 5
    (b) Describe the powers and duties of director. 6
    (c) What do you mean by minutes of proceeding? 4

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2010

Subject code: 2204

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions) (Answer any five questions)

Marks - 5×5=25

1. "No consideration no contract" – State this rule with exceptions. 5
2. "All agreements are not contracts but all contracts are agreements" – Discuss the statement. 5
3. (a) Distinguish between fraud and misrepresentation. 2.5

   (b) Contrast between indemnity and guarantee. 2.5
4. Define Bailment. What are the requisites of Bailment? 5
5. What is meant by "Statutory meeting"? Discuss the contents of a statutory report. 5
6. (a) Differentiate between 'Condition' and Warranty'? 3

   (b) What are the effects of supervising impossibility? 2
7. Define a prospectus and distinguish it from a statement in lie of prospectus. 5

Part- B (Board Questions) (Answer any three questions)

Marks - 15×3=45

8. (a) What are the rules regarding delivery of goods under the sale of goods act? 5

   (b) Distinguish between sale and agreement to sell. 5

   (c) What are the differences between share warrant and share certificate? 5
9. (a) How is the existences of a partnership determined? 3

   (b) What are the effects of non-registration of a firm? 4

   (c) Can a minor become a member of a partnership firm? If so, what are his rights and liabilities under the partnership Act? 8
10. (a) When is a company deemed to be under to pay its debts? – Discuss. 5

    (b) What are the differences between members 'voluntary winding-up and creditor's voluntary winding-up? 5

    (c) What is the effect of compulsory winding-up by the court? 5
11. (a) Discuss the methods of Appointment of Directors. 5

    (b) How is the office of directors vacated? 4

    (c) Discuss the rules regarding of duration of Managing Director. 6
12. (a) Differentiate between Memorandum of Association and Articles of Association. 6

    (b) When and how the Memorandum can be altered? 4

    (c) What are the rules regarding endorsement? 5

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2009

Subject code: 2204

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions) **(Answer any five questions)**

Marks: 5×5=25

1. Can a minor become a member of a partnership firm? If so, briefly mention his rights and liabilities under the partnership Act. 5
2. "No seller of goods can give the buyer of goods a better title to those. Goods than he himself has"- Briefly discuss. Are there exceptions to this rule? 5
3. What is meant by Breach of Contract? Mention some important remedies for breach of contract. 5
4. What do you mean by winding up of a company? Write the circumstances under which a company may be wound up by the court. 5
5. (a) Distinguish between offer and acceptance. 2
   (b) How and when an offer be revoked? 3
6. (a) Describe the differences between share warrant and share certificate. 2.3
   (b) State the content of a prospectus. 2.3
7. (a) Define with example each of the following: 3
   (i) Void agreement; (ii) Voidable agreement.
   (b) Distinguish between coercion and under influence. 2

Part- B (Board Questions) **(Answer any three questions)**

Marks - 15×3=45

8. (a) What do you mean by consideration? 3
   (b) Discuss different types of consideration. 6
   (c) "An agreement without consideration is void"- Explain. 6
9. (a) What is negotiable instrument? 3
   (b) What are the essential features of a Negotiable Instrument? 7
   (c) Contrast between without Memorandum and Article of Association. 5
10. (a) 'A contract is an agreement enforceable by law'- Explain. 5
    (b) What are the essential elements of contract? 5
    (c) State the differences between agreement and contract. 5
11. (a) What are the differences between 'Condition' and 'Warranty'? 5
    (b) What do you understand by Caveat Emptor and state its exceptions. 5
    (c) Describe briefly the rules regarding delivery of goods according to the Sale of Goods Act, 1930. 5
12. Write short notes (any five): 3×5=15
    (a) Official Liquidator;
    (b) Extra-ordinary General Meeting;
    (c) Pre-incorporation contract;
    (d) Indemnity & Guarantee in contract;
    (e) Promoters;
    (f) Dishonour of Negotiable Instruments;
    (g) Managing Agent.

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2008

Subject code: 2204

Examination Code: 604

(Commercial Law)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions) (Answer any five questions)

Marks - 5×5=25

1. (a) "All contracts are agreement but all agreement are not contract" – Explain. 3
   (b) What is a counter offer? 2
2. "No consideration no contract" – State this rule with exceptions. 5
3. Discuss the rules relating to infants contract according to Bangladeshi Law. 5
4. What do you mean by Negotiable Instrument? What are the characterises of a Negotiable Instrument? 5
5. How can a Private Limited Company be converted into a Public Limited Company? 5
6. (a) What are the essential elements of partnership? 2
   (b) What are the various ways of creating agency? 3
7. (a) What is Memorandum of Association? 2
   (b) State the contents of a Memorandum of Association. 3

Part- B (Board Questions) (Answer any three questions)

Marks – 15 × 3=45

8. (a) What are the rules regarding delivery of goods under the Sale of Goods Act? 6
   (b) What are the rights of an unpaid seller? 4
   (c) Define Bailment. What are the requisites of bailment? 5
9. (a) Define Prospectus. State the contents of a prospectus. 5
   (b) What is meant by "Statutory meeting"? Discuss the contents of a statutory report. 5
   (c) State the usual steps to be taken in the formation of a company under the companies Act-1994. 5
10. (a) Discuss the relation of partners to third parties. 5
    (b) Mention the acts for which a partner has implied authority to find the firm. 5
    (c) State the consequences of non-registration of a partnership firm? 5
11. (a) How can Article of Association of a company be altered? 5
    (b) Discuss the rights and liabilities of partners of a firm. 5
    (c) What are the rules regarding endorsement? 5
12. (a) What is the doctrine of "caveat emptor"? Explain the excerptions of the principle "caveat emptor". 6
    (b) State the rights and duties of shareholder of a company. 5
    (c) Why is a cheque crossed? 4

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2007

Subject code: 2204

Examination Code: 604

(Commercial Law/Business Law-I)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions)

(Answer any five questions)

Marks - 5×5=25

1. (a) Define contract. 2
   (b) Explain the essential elements of contract. 4
2. (a) Distinguish between fraud and misrepresentation. 3
   (b) Differentiate between indemnity and Guarantee. 3
3. (a) Distinguish between offer and acceptance. 2
   (b) Describe the ways of revocating an offer. 4
4. (a) Is the registration of a partnership firm compulsory? 3
   (b) What are the benefits of registration of partnership firm? 3
5. What are the liabilities of the concerned parties for conveying false or fraudulent information in the prospectus? 6
6. What rules, according to the Companies Act, 1994 are to be observed for starting a foreign company in Bangladesh? 6
7. In what circumstance the court may think the liquidation of a company just and equitable? 6

Part- B (Board Questions)

(Answer any three questions)

Marks - 15×3=45

8. (a) Differentiate between Memorandum of Association and Articles of Association. 5
   (b) When and how the Memorandum can be altered? 5
9. (a) Discuss the rules regarding consideration. 5
   (b) "No consideration no contract" – Explain. 5
10. (a) What is meant by breach of contract? 4
    (b) Discuss the remedies for the breach of contract. 6
11. (a) What are the essential elements of negotiable instruments? 5
    (b) Distinguish between promissory note and bill of exchange. 5
12. (a) Distinguish between sale and agreement to sell. 4
    (b) "No seller can give the buyer a better title of goods than he himself has"- Discuss. 6
13. (a) Distinguish between share certificate and share warrant. 5
    (b) What qualifications does a shareholder of a joint stock company need to have to qualify as director? 5

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2006

Subject code: 2204

Examination Code: 604

(Commercial Law/Business Law-I)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions)

(Answer any five questions)

Marks - 5×5=25

1. (a) What is a Memorandum of Association? 2
   (b) State the contents of a Memorandum of Association. 4
2. (a) Distinguish between a Public Limited Company and a Private Limited Company. 2
   (b) Write down the essential features of a company. 4
3. (a) What is a "Prospectus"? 2
   (b) State the contents of a prospectus. 4
4. (a) Distinguish between void and voidable agreements. 2
   (b) State when a consent is not said to be free. 4
5. (a) What is the doctrine of "caveat emptor"? 3
   (b) When and under what circumstances can a seller exercise the right of re-sale? 3
6. Can minor become a member of a partnership firm? If so, discuss his rights and liabilities. 6
7. (a) Describe the agreement against public policy. 3
   (b) What are the difference between share warrant and share certificate?3

Part- B (Board Questions)

(Answer any three questions)

Marks - 15×3=45

8. (a) Define Bailment. What are the requisites of Bailment? 5
   (b) What are the duties of a Bailee and a Bailor? 5
9. (a) What is meant by "statutory meeting"? Discuss the contents of a statutory report. 5
   (b) What is convertible debenture? 2
   (c) Discuss the modes of appointment of directors of a company. 3
10. (a) State the consequences of non-registration of a partnership firm. 4
    (b) Distinguish between general crossing and special crossing of a cheque. 4
    (c) What is special resolution? 2
11. (a) Define contract. Explain the essential elements of a contract. 7
    (b) What do you mean by contingent contract? 3
12. (a) Define offer and acceptance. Discuss the rules regarding offer. 7
    (b) How and when an offer be revoked? 3
13. (a) What do you mean by consideration? Discuss different types of consideration. 5
    (b) "Insufficiency of consideration is immaterial; but an agreement without consideration is void." Explain. 5

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2005

Subject code: 2204

Examination Code: 604

(Commercial Law/Business Law-1)

[N B. The figures in the right margin indicate full marks. Answer All questions from Part- A, four question from part- B and three question from part- C.]

Part- A (Marks - 1×10=10)

1. (a) An agreement not enforceable by law is said to be ----------
   (i) Vaid (ii) Void (ii) Voidable
   (b) ---------- consideration is not consideration.
   (i) Present (ii) Past (ii) Future
   (c) A proposal is also called ----------
   (i) Contract (ii) offer (iii) acceptance
   (d) Misrepresentation arises when the ---------- made is inaccurate.
   (i) fact (ii) mistake (iii) representation
   (e) Who can demand performance?
   (i) Promisee (ii) Promisor (iii) Govt
   (f) Goods means every kind of ----------
   (i) Money (ii) actionable claims (iii) Movable property
   (g) What are the parties in a Charter Party?
   (i) One (ii) Two (iii) Three
   (h) The common carriers Act established in ----------
   (i) 1869 (ii) 1985 (iii) 1870
   (i) Which is not a common carrier?
   (i) Bangladesh Railway (ii) BRTC (ii) Bangladesh Post-office
   (j) Who may be an agent?
   (i) Govt. (ii) A minor (iii) an adult

Part- B (Marks - 5×4=20)

2. Define offer and acceptance. Whom are offer and acceptance deemed to be completed?
3. Give two examples of each of the following: -
   (a) Void agreement; (b) Voidable agreement; (c) Enforceable agreement.
4. Distinguish between coercion and undue influence.
5. In what circumstances does a contract become void?
6. Briefly mention who are sub-agents and co-agents?
7. In what circumstance does discharge of contract take place?

Part- C (Marks - 10×3=30)

8. "All agreements are not contracts, but all contracts are agreements." Discuss the statement explaining essential elements of a valid contract.
9. Critically discuss the essential elements of consideration and give example.
10. What do you understand by certificate of incorporation of a company? State the rights, duties and the liabilities of a shareholder.
11. (a) What is negotiable instrument? What its feature?
    (b) Briefly define law of insolvency.
12. (a) Briefly describe the process of creating agency.
    (b) What are the possible frauds and mispresentations done by agents?

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Legal Environment of Business

BBA SECOUND YEAR FOURTH SEMESTER EXAMINATION, 2004

Subject code: 2204

Examination Code: 604

(Commercial Law/Business Law-1)

[N.B. The figures in the right margin indicate full marks. All parts of a question must be answered sequentially.]

Part- A (Short Questions)

(Answer any four questions)

Marks - 5×4=20

1. Explain the essential elements of a contract.
2. Distinguish between void agreements and voidable contracts.
3. "No consideration no contract" – Explain.
4. In what ways can an agency be created?
5. Who is an unpaid seller of goods and what are his rights against the goods?
6. What do you understand by "Caveat Emptor"? Are there any exceptions to its application to sale goods?

Part- B (Board Questions)

(Answer any two questions)

Marks - 10×2 = 20

7. (a) Who is a Minor? What do you understand by "necessities" supplied to a Minor?

   (b) State the duties of a Principle to his Agent.

   (c) Write notes on the following:-

   Share, Reserve Capital.

8. (a) What are the essential feature of a Negotiable Instrument?

   (b) What is a bill of exchange?

   (c) Who can accept a bill of exchange?

9. (a) Define prospectus.

   (b) State the contents of a prospectus.

   (c) Define the term 'statement in leu of prospectuses'.

The End

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৬৮/৬৯ প্যারীদাস রোড, রুমি মার্কেট

বাংলাবাজার, ঢাকা-১১০০